TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~589~~ 353

L. D. STONE, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF DANE, STATE OF WISCONSIN.

FILED SEPTEMBER 14, 1875.

SUPREME COURT OF THE UNITED STATES

No. 589.

L. D. STONE, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF DANE, STATE OF WISCONSIN.

INDEX.

	Original.	Print.
Warrant	1	1
Complaint	3	1
Recognizance	5	2
Minute entries	7	3
Testimony of William Welch	11	4
T. D. Plumb	13	5
L. D. Stone	14	5
Warrant	15	5
Deposition of William Welch	17	6
Bond on appeal	19	7
Minute entries	21	7
Recognizance	26	9
Bill of exceptions	28	10
Writ of error	104	34
Proceedings in Supreme Court	106	35
Clerk's certificate	108	35
Remittitur	109	35
Opinion of Supreme Court	112	36
Clerk's certificate	116	37
Writ of error	118	38
Citation	120	38
Bond	121	39
Clerk's certificate	123	39

1 COUNTY OF DANE,
City of Madison, ss:

Municipal court, city of Madison.

The State of Wisconsin to the sheriff or any constable of said county, greeting:

Whereas William Welch has this day made complaint on oath, in writing, to the judge of the municipal court of the city of Madison, in said county, that L. D. Stone did on the twelfth day of May, A. D. 1874, at the city of Madison, in said county, the said L. D. Stone being then and there an agent of the Chicago, Milwaukee and St. Paul Railway Company in said city, and authorized by it to receive and charge compensation for transportation of passengers on said railway as such agent aforesaid, wrongfully, unlawfully, and willfully charge and receive from Rich'd F. Hayes, as deponent verily believe', for the transportation of him, said Richard F. Hayes, with ordinary *passage*, not exceeding one hundred pounds in weight, over said railway or part of railroad, from the city of Madison, in the county of Dane, Wisconsin, to the city of Janesville, in the county of Rock, Wisconsin, which is a distance by said railroad, or part of railroad, of forty miles and no more, a greater and higher rate and compensation than three cents per mile, to
2 wit, the sum of one dollar and sixty cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wisconsin, and prays that the said L. D. Stone might be arrested and dealt with according to law:

Now, therefore, in the name of the State of Wisconsin, you are hereby commanded forthwith to apprehend the said L. D. Stone and bring him before the said municipal court to be dealt with according to law.

Given under the hand of the judge of the municipal court of said city the 28 day of May, A. D. 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) State of Wisconsin against L. D. Stone.

DANE COUNTY, *ss:*

The within warrant executed by arresting the within-named L. D. Stone, and have him in custody now before the court.

Fees: Arrest, $.25; mileage, m., $.20; conveying prisoner, m., $.10; committing, $.37; attending court, $1.50—$2.42.

3 Dated this 29th day of May, A. D. 1874.

THOS. BOURKE,
Policeman.

Filed this 29th day of May, A. D. 1874. A. B. Braley, judge. County, page 149.

Complaint.—Transportation of passenger.

Chapter 273, laws of 1874.

STATE OF WISCONSIN,
County of Dane, ss:

WILLIAM WELCH, being duly sworn and examined, on oath before the undersigned, municipal judge in and for said county, deposes and says that on the twelfth day of May, A. D. 1874, the Chicago, Milwaukee

and St. Paul Railway Company owned, operated, or managed a railroad, or part of a railroad, in the State of Wisconsin, between the city of Madison, in the county of Dane, Wisconsin, and the city of Janesville, in the county of Rock, Wisconsin; that the said Chicago, Milwaukee and St. Paul Railway Company then was, and for a long time theretofore had been and still is, commonly known and called under its former name of the Milwaukee and St. Paul Railway Company, and is by that name mentioned and designated in section one of chapter 273 of the laws of 1874 of this State.

4 That on this said 12th day of May, 1874, L. D. Stone was an agent of said company, duly authorized by it to charge and receive compensation for the transportation of passengers over said railroad, or part of railroad, and that said L. D. Stone did on said 12th day of May, 1874, at said city of Madison, in said county of Dane, Wisconsin, as such agent, and being then and there so authorized by said company as aforesaid, wrongfully, unlawfully, and wilfully charged and received from Richard F. Hayes as deponent verily believes, for the transportation of Richard F. Hayes as a passenger with ordinary baggage, not exceeding one hundred pounds in weight, over said railroad, or part of railroad, from the said city of Madison, in the county of Dane, Wisconsin, which is a distance by said railroad, or part of a railroad, of forty miles, and no more, a greater and higher rate and compensation than three cents per mile, to wit, the sum of one dollar and sixty cents, contrary to the statute in such case made and provided and against the peace and dignity of the State; and complainant prays that the said L. D. Stone may be arrested and dealt with according to law.

WM. WELCH.

5 Subscribed and sworn to and complainant examined on oath before me, this 2d day of May, 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) Municipal court, State of Wisconsin vs. L. D. Stone, complainant. Filed this 29th day of May, 1874. A. B. Braley, judge. County, page 149.)

STATE OF WISCONSIN,
County of Dane, City of Madison, ss:

We, L. D. Stone, J. H. Palmer, of said county, acknowledge ourselves to owe and be indebted to the State of Wisconsin in the sum of two hundred dollars, to be well and truly paid if default be made in the condition following:

Whereas the said L. D. Stone has appealed from the judgment of the judge of the municipal court of the city of Madison, in said county, rendered on the 17th day of June, 1874, on complaint for violation of

6 railroad law, between the State of Wisconsin, plaintiff, and the said L. D. Stone, defendant:

Now, if the said shall personally appear before the circuit court of said county at the term thereof next to be held therein, and abide the judgment of the court therein, then this recognizance to be void; otherwise of force.

L. D. STONE.
J. H. PALMER.

Taken, subscribed, and acknowledged before me this 17th day of June, A. D. 1874.

THOS. C. BOURKE, *Clerk.*

(Indorced *to* follows, to wit:) Municipal court. State vs. Stone. Rich'd F. Hayes' recognizance, June 16 & 17, 1874. Filed this 17th day of June, 1874. A. B. Braley, judge. County, page 149.)

7 STATE OF WISCONSIN *against* L. D. STONE. } Violation of railroad law. Richard F. Hayes.

Fine, $50.00; judge's fees, $12.37; witness, $1.84; jury, $3.00; officers, $14.34.

1874, MAY 28TH.—On examination of complainant on oath, and reducing the same to writing.

29TH.—Warrant issued, returnable forthwith. Subpœna issued. Warrant returned. Defendant in custody before the court.

Fees.—On warrant, $2.42; on subpœna, $0.33. Thos. C. Bourke, policeman.

Complaint read. Defendant declines to plead; thereupon the court enters a plea of not guilty, and, by consent of both parties, case continued until the 30th inst. at 9 o'clock in the forenoon, at my office. Defendant ordered to give bail in the sum of four hundred dollars for his appearance on said 30th day, in default of said bail to be committed to the jail of Dane County. Bail given and approved. Defendant discharged from the custody of the officer.

30TH, 10 a. m.—Parties present; and, by consent of both parties, the case was adjourned until the 10th day of June, A. D. 1874, at 9 o'clock in the forenoon, at my office. Defendant ordered to give bail for
8 his appearance on the said 10th day of June. Bail given and approved.

JUNE 10TH, 10 a. m.—Parties present; by consent of both parties case continued until the 11th inst. at 9 o'clock in the forenoon, at my office. Defendant ordered to give bail for his appearance.

11TH, 9 a. m.—Parties present; by consent of both parties case adjourned until the 16th inst. at 9 o'clock in the forenoon, at my office. Defendant ordered by the court to give bail for his appearance in court on said 16th day of June, A. D. 1874. Bail given and approved.

1874, JUNE 16TH, 9 a. m.—Case called; parties present. Defendants call for jury. John Adams, sheriff, ordered to draw eighteen names from jury box, and said eighteen names being duly drawn, they were duly written down under the directions of the court, and each party having stricken off six names from the list, a venire was duly issued for the following named persons: John Gripper, L. Sutter, J. H. Palmer, Wm. H. Lansing, Martin Joachino, and T. A. Nelson, retur'able on the 17th day of June, A. D. 1874, at 9 o'clock in the forenoon, at my office. Subpœna issued for Richard F. Hayes, returnable forthwith. By consent
9 of parties the case was adjourned until the 17th inst. at 9 o'clock in the forenoon, at my office. Defendant ordered to renew his bail for his appearance in court on said 17th day of June, A. D. 1874. Bail renewed and approved.

JUNE 17th, 9 a. m. Parties present; jury present. Venire returned duly served personally on each of the persons therein named. Fees $2.64. Subpena returned. Richard F. Hayes in court. Fees $1.52. John Adams, sheriff. Jury duly empannelled and sworn. Cause proceeded with. Defendant's counsel makes a motion for the dismissal of

the case. The court having no jurisdiction in the case, objection overruled. Wm. Welch and Richard F. Hayes sworn as witnesses on behalf of plaintiff, and after argument by counsel for prosecution and defendant and instructions of the court.

1874, JUNE 17TH. Cause submitted to the jury, who retired under the care of John Adams, sheriff, who was duly sworn to attend them, and on the same day the jury returned into court under the care of the officer and publicly announced the following verdict: "We, the jury, find the defendant guilty." Jury discharged by the court; and thereupon the court adjudges and determines that the defendant pay a fine of fifty dollars, and costs in the further sum of thirty-one dollars and fifty-five cents.

10 STATE OF WISCONSIN,
Dane County, City of Madison:

I hereby certify the foregoing to be a true transcript of the proceedings had before me in the above-entitled action, as appears from my docket and papers on file.

Given under my hand this 3d day of October, A. D. 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) Municipal court, A. B. Braley, judge. State of Wisconsin against L. D. Stone. Transcript. Filed Oct. 5th, 1874. L. D. Frost, clerk.

11 STATE OF WISCONSIN *agst.* L. D. STONE. } On complaint of Wm. Welch. June 10th, 1874.

WM. WELCH, sworn for plff., says:

Know of the railway run from city of Madison to Milton Junction; know the name of railroad co., it is the Chicago, Mil. & St. Railroad Company. The track is owned by said co. The road is now in operation. It is admitted that the road was originally destined as the Milwaukee & Waukesha R. Road, then known as the Mil. & Mississippi R. R., and was then built from Mil. to Madison, and to Mississippi River by way Mil. Junction, and by Milton Junction to Janesville; that in 1860 & 1861 divers mortgages given by Milwaukee and Miss. R. R. Co., covering the whole line of road, were foreclosed, and the whole property sold in chancery to John Catlin and his associates; and that they in January, 1861, organized the Mil. & P. Du Chien R. R. Co., filing articles of association in office of sect'y of state, in *pende*nce of statute; that said M. & P. Du Ch. R. R. Co. control' operate' the R. R. until July, 1868, when that co. by a deed transferred it *by a deed* to the present co., then know' as the Mil. & St. Paul Railroad Company; that since
12 that time it has been owned and operated by the present Chicago, Mil. & St. Paul R. R. Co. (Obj'ct.) On the 12th of May, the co. was usually known, *on the 12th of May it was known*—prior to Feb. 11th, 1874, it was known as the Mil. & St. Paul R. R. Co. The name of the co. was known as the Mil. & St. Paul Road Co. before the 11th of February. On the 1st of May, 1874, I went to city of Janesville from Madison, starting at the West Madison depot. Know Mr. Stone, deft.; I bought a ticket of him from Madison to Janesville. He was at the West depot, in this city and co. and State of Wis. Mr. Stone has been

acting in the capacity of selling tickets for this co. He was an agent of this co. at the time, and still is. He has for several years acted in the capacity of agent in selling tickets to passengers on this road. I went to the office and told him I wanted two tickets for Janesville, and laid down a $5 bill, and he gave me 1.87 in return. I paid him $1.60 for each ticket. I have measured it by sectional map. I have measured it. I can swear from my observation it is less than (obj'ct.) 40 miles. I was carrying ordinary baggage; had less than 10 pounds baggage.

13 Mr. STONE, ex.: The Chicago & St. Paul R. R. Co. was known as the Mil. St. Paul R. R. Co. up to Feb. 11th, 1874. I knew this name from reading it and hearing it spoken. I could not say that it had been called Chicago & St. Paul R. R. Co. for year past. I have made two or three compl's against the road. I made the other complaint against R. R. Co. agent R. F. Hays. Mr. Petherick has made a complaint. He is a printer. I could not say that I have asked any one to make a complaint. I employed as council in these cases.

T. D. PLUMB, swo s

I have traveled frequently between Madison & Janesville. The distance—it is 41 & ⅔d miles from Madison to Janesville.

X. Never measured the distance. It is now 1 & ⅓ miles less by junction. I know the guide-posts—that the railroad has mile-posts—and I have seen them every one. There are not mile-posts all the way to Janesville.

The plt'f. rests.

Resolution changing name offered & rec'd.

2. Act to incorporate Mil. & Waukesha; offered and received 11, 1 4.

3. An act suppl' to alter offered March 11, 1848.

14 4. An act supplemental to alter ap'r'v'd Feb. 1st, 1850, changing name to Milwaukee & Mississippi Co.

5. Section 33, chap. 79, R. S. st., 1858.

L. D. STONE sworn:

Am ticket-agent of the R. R. Co. I give a bond to the R. R. Co. I run the tickets I have for sale from the general-passenger agent. Tickets are all charged to me when I receive them, and have to return the tickets or the money; have no interest in the sale of tickets. Tickets are pieces of pasteboard.

X. Knew of the passage of this law when I sold tickets.

(Indorsed as follows, to wit:) Municipal court, State of Wisconsin vs. Stone. Wm. Welch, June 10 & 11th, 1874. Filed this 11th day of June, 1874. A. B. Braley, judge.

15 COUNTY OF DANE,
City of Madison, ss:

Municipal court, city of Madison.

The State of Wisconsin to the sheriff or any constable of said county, greeting:

Whereas William Welch has this day made complaint on oath, in writing, to the judge of the municipal court of the city of Madison, in said county, that L. D. Stone did on the 12th day of May, A. D. 1874, at the city of Madison, in said county, the said L. D. Stone being then

and there the agent of the Chicago, Milwaukee and St. Paul Railway Company in said city, and authorized by it to receive and charge compensation for the transportation of passengers on said railroad, as such agent aforesaid, wrongfully, unlawfully, and wilfully charged and received from this complainant for the transportation of him, said affiant, with ordinary baggage, not exceeding one hundred pounds in weight, over said railroad or part of railroad, from the said city of Madison, in the county of Dane, Wisconsin, to the said city of Janesville in the county of Rock, Wisconsin, which is a distance by said railroad or part of railroad of forty miles, and no more, a greater and higher rate and compensation than three cents per mile, to wit, the sum of one
16 dollar and sixty cents, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wisconsin, and prays that the said L. D. Stone might be arrested and dealt with according to law: Now, therefore, in the name of the State of Wisconsin, you are hereby commanded forthwith to apprehend the said L. D. Stone, and bring him before the said municipal court to be dealt with according to law.

Given under the hand of the judge of the municipal court of said city the 23d day of May, A. D. 1874.

A. B. BRALEY, *Judge*.

(Indorsed as follows, to wit:) State of Wisconsin against L. D. Stone.

DANE COUNTY, *ss*:

The within warrant executed by arresting the within-named L. D. Stone, and have *now* in custody now before the court.

Fees: Arrest, $.25c.; mileage, m., $.20c.; conveying prisoner, m., $.10c.; commiting, $.50c.; attending court, $1.50. Dated this 23d day of May, A. D. 1874.

17 JOHN ADAMS, *Sheriff*.
By ISAAC VAN WIE, *Dep'ty*.

Filed this 23 day of May, A. D. 1874. A. B. Braley, judge. County, page 140.

STATE OF WISCONSIN,
County of Dane, ss:

WILLIAM WELCH, being duly sworn and examined on oath before the undersigned, municipal judge in and for said county, deposes and says that on the twelfth day of May, A. D. 1874, the Chicago, Milwaukee & St. Paul Railway Company owned, operated, and managed a railroad or part of a railroad in the State of Wisconsin, between the city of Madison, in the county of Dane, Wisconsin, and the city of Janesville, in the county of Rock, Wisconsin; that the said Chicago, Milwaukee and St. Paul Railway then was and for a long time theretofore had been and still is commonly known under its former name of the Milwaukee and St. Paul Railway Company, and is by that name mentioned and designated in section one of chapter 273 of the
18 laws of 1874 of this State; that on the said twelfth day of May, 1874, L. D. Stone was an agent of said company, duly authorized by it to charge and receive compensation for the transportation of passengers over said railroad or part of railroad, and that said L. D. Stone did on said 12th day of May, 1874, at said city of Madison, in said county of Dane, Wisconsin, as such agent, and being then and there so authorized by said company as aforesaid, wrongfully and unlawfully

charge and receive from said affiant, for the transportation of him, said affiant, with ordinary baggage, not exceeding one hundred pounds in weight, over said railroad or part of railroad, from the said city of Madison, in the county of Dane, Wisconsin, to the said city of Janesville, in the county of Rock, Wisconsin, which is a distance by said railroad or part of railroad of forty miles and no more, a greater and higher rate and compensation than three cents per mile, to wit, the sum of one dollar and sixty cents, contrary to the statute in such case made and provided, and against the peace and dignity of the States; and complainant prays that the said L. D. Stone may be arrested and dealt with according to law.

WM. WELCH.

19 Subscribed and sworn to and complainant examined on oath before me, this 23d day of May, 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) Complaint. Wm. Welch, complainant. State of Wisconsin against L. D. Stone, ss. Municipal court, city of Madison. Filed this 23d of May, 1874. A. B. Braley, judge. County, page 140.

STATE OF WISCONSIN,
County of Dane, City of Madison, ss:

We, L. D. Stone & John W. Cary, of said county, acknowledge ourselves to owe and be indebted to the State of Wisconsin in the sum of two hundred dollars, to be well and truly paid if default be made in the conditions following:

Whereas the said L. D. Stone has appealed from the judgment
20 of the municipal judge of the city of Madison, in said county, rendered on the 11th day of June, 1874, on complaint for violation of chapter 273, laws of 1874, between the State of Wisconsin, plaintiff, and the said L. D. Stone, defendant:

Now if the said L. D. Stone shall personally appear before the circuit court of said county, at the term thereof next to be held therein, and abide the judgment of the court therein, then this recognizance to be void; otherwise, of force.

L. D. STONE.
JOHN W. CARY.

Taken, subscribed, and acknowledged before me this 11th day of June, A. D. 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) Municipal court. State vs. Stone. R. R. Recognizance for appeal. Filed this 11 day of June, A. D. 1874. A. B. Braley, judge. County, page 140.

21 STATE OF WISCONSIN *against* L. D. STONE. } Violation of railroad law. Wm. Welch, comp't.

Fine, $50.00; judge's fees, $11.79; witness, $1.56; jury, $6.00; officers, $6.57.

1874, MAY 23D.—On examination of complainant on oath, and reducing the same to writing:

Warrant issued returnable forthwith. Suppœna issued. Warrent

returned. Defendant in custody before the court. On warrant, $2.55. John Adams, sheriff, and Isaac Van Wie, deputy. Complaint read. Defendant declines to plead. Thereupon the court enters a plea of not guilty, and by consent of both parties the case is continued to 30th inst., at 9 o'clock in the forenoon at my office. Defendant ordered by the court to give bail in the sum of four hundred dollars for his appearance in court on said 30th day of May, A. D. 1874; in default thereof that he be committed to the jail of Dane County. Bail given and approved. Defendant discharged from custody of the officer.

30TH, 10 a. m.—Parties present, and by consent of both parties case adjourned until the 10 day of June, 1874, at 9 o'clock, at my office. Defendant ordered to give bail. Bail given and approved.

22 JUNE 10TH, 9 a. m.—Subpœna returned. Fees, $1.45. John Adams, sh'ff. Parties present. Defendant's counsel call for a jury. John Adams, sheriff, ordered to draw eighteen names from jury-box, and said eighteen names being duly drawn, they were duly written down, under directions of the court; and each party having stricken off six names from the list, a venire was duly issued for the following-named persons as jurors: M. B. French, H. Kroncke, W. J. Park, Deming Fitch, B. W. Warnes, and E. D. Miner, returnable at 12 o'clock m. of this day. Venire returned duly served personally on each of the persons therein named. Fees, $2.07. John Adams, sheriff. Jurors present, duly empanelled, and sworn. By consent, case adjourned until 2 o'clock p. m. of this 10th day, at my office.

2 o'clock p. m.—Parties present. Jury present. Trial begun. The following-named persons were sworn as witnesses on behalf of plaintiff: Wm. Welch and T. D. Plumb, jr.; and L. D. Stone on behalf of the defendant. By consent, case adjourned until the 11th inst., at 9 o'clock in the forenoon, at my office.

11TH, 9. a. m.—Parties appear; jury present; and after argument by counsel for prosecution and defendant, and instructions of the court,

23 cause submitted to the jury, who retired under the care of John Adams, sheriff, who was duly sworn to attend them; and on the same day the jury returned into court under the care of the officer, and publicly announced the following verdict: "We, the jury, find the defendant guilty." Jury discharged by the court. And thereupon the court adjudges and determines that the defendant pay a fine of fifty dollars, and costs of suit in the further sum of twenty-five dollars and twenty-two cents.

STATE OF WISCONSIN,
Dane County, City of Madison, ss:

I hereby certify the foregoing to be a true transcript of the proceedings had before me in the above-entitled action, as appears from my docket and papers of file.

Given under my hand this 3d day of October, A. D. 1874.

A. B. BRALEY, *Judge.*

(Indorsed as follows, to wit:) Municipal court. A. B. Braley,

24 judge. State of Wisconsin against L. D. Stone. Transcript. Filed Oct. 5, 1874. L. D. Frost, clerk.

Circuit court, Dane County.

THE STATE OF WISCONSIN *agt.* L. D. STONE.

Whereas the said defendant, L. D. Stone, has been at this term con-

victed, upon the complaint in this matter, of an offence against the provisions of chapter 273 of the laws of 1874, and feeling aggrieved thereby has alleged exceptions to the opinions, directions, & judgments of the court in matter of law, which have been reduced to writing, found conformable to the truth of the case, and allowed & signed by the judge of said court at the term, to wit, this present term of this court; and whereas it clearly appears to the court that such exceptions are not frivilous, immaterial, or intended for delay: It is
25 now hereby ordered that all further proceedings in the said circuit court shall be stayed; and on the prayer of the said defendant it is further ordered that the defendant recognize in the sum of five hundred dollars, with sufficient sureties, for his personal appearance at the supreme court at the next June term thereof, and to enter & prosecute his exceptions with effect and abide the sentence thereof, & in the mean time keep the peace & be of good behaviour, or that in default thereof to be committed to the common jail of Dane County.

Nov. ter n, 1874, to wit, Jan'y 30th, 1875.

ALVID STEWART, *Judge.*

(Indorsed as follows, to wit:) Dain Co. circuit. The State of Wisconsin agt. L. D. Stone. Order for bail. Filed Jan'y 30th, 1875. B. Esser, clerk.

26 The State of Wisconsin. In circuit court for the county of Dane.

THE STATE OF WISCONSIN }
vs. }
L. D. STONE. }

We, L. D. Stone, as principal, and T. J. McConnell and Sam'l Drakely, as surities, do hereby acknowledge ourselves to owe and be indebted to the State of Wisconsin in the sum of hundred dollars; for the payment thereof, well & truly to be made, we, and each of us, do hereby bind ourselves and our and each of our heirs, executors, and administrators, firmly hereby.

The condition of this obligation is such that whereas the said L. D. Stone has been at this present November term of the year 1874 of the said circuit court convicted of an offence against the provisions of chapter 273 of the general laws of said State, passed at the annual session of the legislature in the year 1874, and feeling aggrieved by the opinions, directions, and judgments of the said court, has alleged exceptions thereto, pursuant to the statute in such case made and
27 provided, which have been reduced to writing and allowed & signed by the judge of said court pursuant to law; and an order having been made staying proceedings and fixing the amount of this recognizance at the sum aforesaid, in order to enable said Stone to prosecute his said exceptions in the supreme court:

Now, therefore, if the said L. D. Stone shall personally appear at the supreme court at the next ensuing term thereof, and enter and prosecute his exceptions aforesaid with effect, and abide the sentence thereon, and in the mean time shall keep the peace and be of good behaviour, then this recognizance shall be void & of no effect; otherwise, of force.

L. D. STONE. [SEAL.]
T. J. McCONNELL. [SEAL.]
SAML. DRAKELY. [SEAL.]

Taken. Sureties examined & bond accepted and approved this 30th day of January, A. D. 1875.

ALVID STEWART, *Judge.*

(Indorsed as follows, to wit:) Dane Co. circuit. The State of Wisconsin agt. L. D. Stone. Recognizance. Filed Jan'y 30th, 1875. B. Esser, clerk.

28 Circuit court, Dane County.

THE STATE OF WISCONSIN }
vs.
L. D. STONE. }

Afterwards, to wit, on the 21st day of January, A. D. 1875, at a circuit court held in the city of Madison, at the court-house in said county, the honorable Alva Stewart, circuit judge, presiding, the issue so as aforesaid joined came on to be tried, Burr W. Jones, esq., district attorney, appearing for the State, and John W. Cary for the defendant.

And a jury was duly empanneled, tried, and sworn, and the said State, to maintain the issue on its part, called as a witness William Welch, who was duly sworn and testified that the said L. D. Stone was on the 12th day of May, A. D. 1874, the ticket-agent of the Chicago, Milwaukee and St. Paul Railway Company at Madison, in the said county of Dane, and authorized by it to receive and charge compensation for the transportation of passengers on said railway, and that as such agent, on said
12th day of May, charged the said witness and received from
29 him for the transportation of him, with ordinary baggage, not exceeding one hundred pounds in weight, over said railway from Madison, in the county of Dane, to Janesville, in the county of Rock, Wisconsin, the sum of one dollar and sixty cents, and that the distance from Madison to Janesville was only forty miles.

Thereupon the prosecution rested the cause. The said defendant, to maintain said issue on its part, then introduced in evidence the following testimony, to wit: An act to incorporate the Milwaukee and Waukesha Railroad Company, passed by the territorial legislature of the Territory of Wisconsin, and approved February 11th, 1847, in the words and figures following, to wit:

An act to incorporate the Milwaukee and Waukesha Railroad Company.

Be it enacted by the council and house of representatives of the Territory of Wisconsin:

SECTION 1. That William A. Barstow, Norman Clinton, Alexander W. Randall, and Alexander F. Picett, of Waukesha County, and
30 Paraclete Potter, Daniel Wells, Edward D. Holton, Byron Kilbourn, and Samuel W. Weeks, of Milwaukee County, be, and they are hereby, appointed commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Milwaukee and Waukesha Railroad Company, hereby incorporated, and they may cause books to be opened at such times and places as they shall direct for the purpose of receiving subscriptions to the capital stock of said company, first giving sixty days' notice of the time and place of taking such subscription by publishing the same weekly in a public newspaper printed in the county of Waukesha, and also in two printed in the county of Milwaukee.

SECT. 2. That the capital stock of said company shall be one hundred thousand dollars, in shares of one hundred dollars each, and as soon as one thousand shares of stock shall be subscribed and five dollars on each share actually paid in, and a statement shall be deposited with the treasurer of the county of Milwaukee, authenticated by the oath of the secretary and two or more of said commissioners, that
31 such subscriptions and payments have been in good faith made, the subscribers of such stock with such other persons as shall associate with them for that purpose, their successors and assigns, shall be, and they are hereby, declared and created a body corporate and politic by the name and style of "Milwaukee and Waukesha Railroad Company," with perpetual succession, and by that name shall have all the privileges, franchises, and immunities incident to a corporation. They shall be capable in law of purchasing, holding, selling, leasing, and conveying estate, either real, personal, or mixed, so far as the same may be necessary for the purposes hereinafter mentioned and no further; and in their corporate name may sue and be sued; may have a common seal, which they may alter and renew at pleasure; and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well-being of the said corporation.

SECT. 3. That the said commissioners or a majority of them, after the said one thousand shares of stock shall have been subscribed as aforesaid, shall give at least thirty days' notice in the newspapers
32 (hereinbefore) mentioned of the time and place by them appointed for the subscribers or stockholders to meet for the purpose of electing nine directors; and annually thereafter the said stockholders shall meet on the first Monday in July for the purpose of electing directors, as aforesaid, upon a like previous notice to be given by the directors for the time being in such newspapers as they may deem advisable: Provided, That previous to the first election the commissioners hereinbefore named shall elect one of their number president, and they shall perform all the duties and be invested with all the powers of directors: And provided, That if, from any cause, an election shall not be held at the regular time specified therefor, the same may be held at any other time, on notice, as aforesaid; that until such election the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: And provided also, That in case of a vacancy from the death or resignation of any director, his place shall be filled by the board of directors.

33 SECT. 4. The affairs of the said corporation shall be managed by a board of nine directors, who shall be chosen annually by ballot, on the days hereinbefore prescribed, by the stockholders of said company, the votes to be delivered in person, or by proxy duly authorized; which directors shall appoint one of their own number to be president, and shall respectively serve for one year, or until other directors be elected; they shall have power to make and establish such by-laws, rules, orders, and regulations, not inconsistent with the Constitution and laws of the United States or of the State or Territory of Wisconsin, as may be necessary for the well ordering of the affairs of said company: Provided, That none but stockholders shall be eligible to be elected directors, and that at every such election, and in all other cases upon which stockholders shall be called upon to vote, each share of stock shall be entitled to one vote; and also that in all cases of elections for directors the nine stockholders having the greatest number of votes shall be declared duly elected.

SECT. 5. The said directors shall meet at such times and places
34 as be convenient, in such manner as they may hereafter decide upon. Five directors shall be a quorum for the transaction of business, who, in the absence of the president, may appoint a president pro tem. The said directors shall appoint a secretary, treasurer, and such engineers and other officers as they may find necessary; shall fix their compensation, and may demand adequate security for the performance of their respective trusts. They shall have full power to decide the time, and manner, and proportions in which the said stockholders shall pay the money due on their respective shares, and to forfeit to the use of the company the share or shares of every person or persons failing to pay any installment so required, at a reasonable period, not less than thirty days after the time by them appointed for the payment thereof; to regulate tolls; to make such covenants, contracts, and agreements with any person, copartnership, or body-politic whatsoever, as the execution and management of the work and the conveni*ants* and interests of the company may require; and in general to superintend and direct all the operations, receipts, disbursements,
35 and other proceedings of the company: Provided, That no installment called in at any one time shall exceed twenty dollars per share, and that no installment shall be called by the directors without giving at least sixty days' notice thereof in the newspapers hereinbefore mentioned.

SECT. 6. The directors chosen as aforesaid shall issue a certificate to each stockholder for the number of shares he or she shall subscribe for or hold in the said corporation, signed by the president, countersigned by the secretary, and sealed with the common seal; subject, however, to all the payments due and to grow due thereon; which stock shall be transferred in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided for by the by-laws of the company.

SECT. 7. At each annual meeting of the stockholders for the purpose of electing directors the directors of the preceding year shall exhibit to them a complete statement of the affairs and proceedings of the company for such year; and special meetings of the stockholders may be called by order of the directors, or by stockholders holding one-
36 fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying moreover the object of the meeting; but no business shall be transacted at such special meetings unless a majority in value of the stockholders shall attend in person or by proxy.

SECT. 8. The said company shall have power to locate and construct a single or double track railroad from such eligible points in the city of Milwaukee to such eligible points in the village of Prairieville, Waukesha County, as shall be determined upon by a vote of the stockholders holding a majority of the stock of said company, and who shall be represented in person or by proxy at a special meeting called for the purpose of fixing the location or termination of said road, and shall have power to transport, take, and carry property and persons upon the same by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and they shall also have power to make, construct, and erect all such side-tracks, turn-outs, and connecting tracks, and also all such warehouses,
37 toll-houses, machine-shops, carriages, cars, and other works and appendages as may be necessary for the convenience of said company in the use of the said railroad, and also to connect said rail-

road and operate the same with other railroads and branch railroads in the Territory or State of Wisconsin.

SECT. 9. If said corporation shall not within three years from the passage of this act commence the construction of said railroad, and expend twenty thousand dollars or more thereon, and shall not within five years from the passage of this act construct, finish, and put in operation a single or double track of railroad from the city of Milwaukee to the village of Prairieville, then the right, privileges, and powers of the said corporation under this act shall be null and void.

SECT. 10. It shall and may be lawful for said company, their officers, engineers, and agents, to enter upon any lands for the purpose of exploring, surveying, and locating the route of said railroad, doing thereto no unnecessary damages, and when the said route shall be determined by the said company, it shall be lawful for them, their agents,
38 officers, engineers, contractors, and servants, at any time to enter upon, take possession of, and use such lands, not exceeding four rods in width, along the line of said route, subject, however, to the payment of such compensations as the company may have agreed to pay therefor, or as shall be ascertained in the manner hereinafter directed and provided in such cases respectively: Provided, The said corporation shall not in their corporate capacity hold, purchase, or deal in any lands within this Territory other than the land on which said road shall run, or which may be actually necessary for the construction or maintenance thereof, and of the warehouses, machine-shops, and other fixtures connected therewith.

SEC. 11. When the said corporation cannot agree with the owner or owners of such required land for the purchase thereof, or for the damages sustained by such owner or owners thereof, or as to the compensation to be paid to the owner or owners of any land taken for the purpose aforesaid, or when by reason of the legal incapacity or absence of any such owner or owner no such agreement or purchase can be
39 made, then and in any such case it shall be lawful for the judge of the district court of the county in which such lands are situated, on application of either party, and at the cost and charge of such corporation, to appoint three disinterested persons residing in said county, whose duty it shall be to view and examine or survey said lands, with the buildings and improvements, if any, thereon, and to estimate the value of the land so taken or required by the said company, and all damages which the owner or owners thereof shall sustain, or may have sustained, by reason of the taking of the same for the construction and use of said railroad, or works appertaining thereto, taking into consideration the advantage as well as disadvantage of the same to the said owner or owners; and the persons so appointed, before entering upon the discharge of such duties, shall take an oath before some justice of the peace, or other person competent to administer oaths, faithfully and according to the best of their abilties to examine the lands so taken or required by said company, and impartially to estimate and appraise the value of the same, and the damage or injury
40 which the owner or owners thereof shall have sustained or may sustain by reason of the taking and using thereof by the said company, over and above all benefits and advantages which such owner or owners shall derive from the construction of such railroad, whereupon such commissioner shall proceed to examine the premises and estimate the value of such land, and the amount of damages, if any, over and above the benefits and advantages which may accrue to such owners, as aforesaid, and shall make a report of such valuation, in writing, under

their hands and seals, to said judge, and shall return the same within thirty days after their appointment, to the clerk of the district court of the county in which they reside, and it shall be the duty of said clerk to file the same, and in case no appeal shall be made within thirty days after the filing of said report, as hereinafter provided, then the said clerk shall record the same at the expense of said company, and judgment of the said court shall be entered thereon, on motion of either party, at any term of said court: Provided, That either party may appeal to said court within thirty days after said report shall have been
41 filed in the clerk's office, and such appeal shall be tried in the same manner as other issues are tried in said court, and the jury empanneled to try the same shall find the value of the land so taken or required by said company, and the damages which the owner or owners thereof shall have sustained, or may sustain, by the taking of the same, over and above the benefits which will accrue to such owner or owners, from the construction of such railroad, and judgment of court shall be entered accordingly: Provided, also, That it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials, as aforesaid, in the absence of the owner or owners thereof, his, her, or their agents or attorney, unless it shall be shown to them by competent testimony that the said owner or owners have had at least five days' notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners are absent from the Territory or State of Wisconsin, and if the said owner or owners shall be minors or non
42 compos mentis, or absent from the Territory or State, the service of notice may be made on their guardian or trustees, if any there be, or in such manner as the said court may direct: Provided, also, That upon the making and filing of any report, as aforesaid, and payment or legal tender of the amount of any valuation or appraisal specified therein to the owner or owners of any such lands, his, her, or their legal representatives, the said company, their agents, or the contractors for making or repairing said railroad, may immediately take and use the same without awaiting the issue of any appeal brought thereon.

SECT. 12. Whenever any judgment shall have been entered, as hereinbefore provided, for the value of any lands, or for any damages for the taking and using of the same, and the amount specified in such judgement shall have been paid or tendered to the owner or owners of such lands, his, her, or their legal representatives, the said company shall be entitled to the estate and interest in the same as fully as if it had been conveyed in fee-simple; and if such valuation be not secured when tendered, it may at any time thereafter be re-
43 ceived or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: Provided, That the costs of any proceedings and judgments specified in the last preceding section shall be taxed by the court and paid by the said company, except in cases where upon appeal the verdict of the jury shall be for the same or a less sum than that reported by the said commissioners.

SECT. 13. The said railroad shall be so constructed as not to impede or obstruct the free use and passage of any public road or roads which may cross the same; and in all places where said railroad may cross or in any way interfere with any public road, it shall be the duty of said company to make, or cause to be made, a sufficient causeway or passage-way to enable all persons passing or traveling such public road to pass over or under such railroad without inconvenience;

and whenever said railroad shall cross any navigable stream it shall be constructed with a draw over the channel of such stream, not less than thirty feet wide, so as not to obstruct the use of said
44 stream; and said company shall at all times provide the necessary attendance, so as to open said draw for the convenience of persons navigating such stream.

SECT. 14. For the convenience of persons owning or possessing lands through which said railroad shall pass, it shall be the duty of said company, when required, to make a good and sufficient passage-way over or under said railroad whenever the same may be necessary to enable the occupants of said lands to pass over or under the same with waggons, carts, and implements of husbandry, as occasion may require: Provided, That the said company shall in no case be required to make more than one such passage-way for each farm; and when any public road shall cross such railroad in any farm, the persons owning or possessing such farm shall not be entitled to require said company to make any additional causeway.

SECT. 15. On the completion of said railroad or any portion of the track, not less than two miles, it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property as they shall from time to time think reasonable.

45 SECT. 16. If any person shall wilfully and knowingly break, injure, or destroy the railroad so to be constructed by said company, or any part thereof, or any work, building, or machinery attached to or in use upon the same belonging to said company, such person or persons so offending shall each of them, for every such offence, forfeit and pay a sum not exceeding three times the amount of damages caused by such offence; which may be recovered in the name of the said company by action of debt, in any court having competent jurisdiction in the county wherein the offence shall be committed, and shall also be subject to indictment; and upon conviction of such offence, shall be punished by fine and imprisonment, or either, at the discretion of the court.

SECT. 17. The property of every individual invested in said corporation shall be liable to be taken in execution for the payment of his or her debts in such manner as is or may be provided by law: Provided, That all debts due said company shall be first paid.

SECT. 18. The stockholders holding a majority in value of the
46 stock may at any annual or special meeting increase the capital stock of this company to an amount not exceeding three hundred thousand dollars.

SECT. 19. This act shall be favorably construed to effect the purpose thereby intended, and the same is hereby declared to be a public act, and copies thereof printed by authority of the Territory shall be received as evidence thereof.

SECT. 20. In case of a violation by the company of any of the provisions of this act, the legislature of the Territory or State of Wisconsin may resume all & singular the rights and privileges hereby granted to said company.

SECT. 21. This act shall be in force from and after its passage.

The said defendant also introduces an act entitled "An act supplementary to an act to incorporate the Milwaukee and Waukesha Railroad Company, approved February 11th, 1847," passed by the same legislature, approved March 11th, 1848, as follows, to wit:

Be it enacted by the council and house of representatives of the Territory of Wisconsin:

47 SECT. 1. That the Milwaukee and Waukesha Railroad Company be, and they are hereby, authorized and empowered to extend, lay out, and continue the railroad authorized to be constructed by the act to which this act is amendatory, from the village of Waukesha, in the county Waukesha, to such points in the village of Madison, in the county of Dane, and thence west to such points on the Mississippi River, in Grant County, as the said company may determine.

SECT. 2. Whenever the said company shall decide to extend said railroad as aforesaid, they may increase their capital stock to three millions of dollars, which shall be subscribed in shares of like amount as the original stock of said company, and for that purpose may open anew their books of subscriptions, or open new books for the subscriptions of such additional stock, and may appoint such agent or agents to attend to the same as may be necessary for carrying out fully the provisions of this section.

SECT. 3. The said company shall have the same powers in location, continueing, and constructing said road from Waukesha

48 to Madison, and thence to the Mississippi River, as provided in section first, that they have upon that portion of the road from Milwaukee to Waukesha, and all previous regulations and restrictions, and all authority granted to and liabilities of said company, shall not in any manner be abridged, extended, or altered by the increase of capital stock and extension of the road as aforesaid, except such alteration, extensions, and increase as is authorized by the provisions of this act.

The defendant also introduced in evidence an act entitled "An act supplimentary to the several acts relating to the Milwaukee and Waukesha Railroad Company, approved February 11th, 1847," passed by the legislature of the State of Wisconsin, and approved February 1st, 1850, as follows:

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The second section of the act to incorporate the Milwaukee and Waukesha Railroad Company is hereby so amended as to change the name of style thereof, and it is hereby enacted that

49 said corporation shall hereafter be known by the name and style of the Milwaukee and Mississippi Railroad Company, and whenever the former name shall occur in any law or proceeding, the latter name shall be substituted and understood therefor; and further, the affairs of said corporation shall be managed by a board of not less than nine nor more than fifteen directors, as may be provided by the by-laws of said company from time to time, instead of nine directors, as provided by the fourth section of the act to which this is amendatory, and said section is hereby so amended.

SEC. 2. It shall be lawful for said company, their officers, engineers, and agents, to enter upon lands adjacent to the railroad beyond the limits of Four Roads in the manner provided in the tenth section of said act, when necessary for the purpose of erecting depot buildings, station-houses, and necessary fixtures for the operations of the business of said road, and for the purpose of making drains and giving a proper direction to water-courses across or along said road when the same are necessary beyond the said limits of said road, and to remove all sub-

50 stances and things which might endanger, obstruct, or interfere with the free use of said road, and to deposit earth and gravel

taken from deep cuts, and to obtain earth, gravel, and other materials for embankments and structures necessary to the construction and repairs of said road, doing, however, no unnecessary damage, and all damage which shall be done to any lands or property under the provisions of this section shall be ascertained and paid for in the manner and agreeable to the provisions contained in the eleventh section of the said act, and when such damages shall have been paid or tendered, the title to the land occupied by such buildings, fixtures, excavations, and embankments shall vest in fee-simple in said corporation, agreeable to the provisions contained in the twelfth section of the act aforesaid.

SECT. 3. In cases where said railroad may cross or come in contact with any public or private road, so as to occupy any part of such road, it shall be lawful for said company to construct said railroad across or upon such road after altering and putting the same in as good condition as before, and for that purpose the said company shall, previous to
51 occupying any part of such road, construct a new road, in part or in whole, as may be necessary, in ground adjacent to such road, and in every respect complete such newly-constructed road, or part of a road, and put the same in as good repair and condition as the road so interfeared with was previous to the disturbance and occupancy thereof by said company.

SECT. 4. Any person who shall wilfully and maliciously place any obstructions or thing on the track of said road, or shall remove or damage any part thereof in such a manner that the cars may be impeded or thrown off the track, shall be deemed guilty of a misdemeaner, whether such accident shall actually take place or not, and shall be punished for every such offence by imprisonment in the State prison for a term not less than one year nor more than five years, at the discretion of the court, and in case any damage shall result from the placing of such obstructions, or injury to said road, said party shall be liable to pay all such damage to said company, and to any other person who may be damaged thereby, and in case any accident shall happen in conse-
52 quence of placing such obstructions or in consequence of breaking or injuring said road whereby death may be produced, the party so offending shall be adjudged guilty of murder in the first degree, and shall be adjudged and punished agreeable to the law in such case made and provided.

The defendant then introduced proof of the organization of the company under said charter, as follows:

STATE OF WISCONSIN,
County of Waukesha, ss:

LEMUEL W. WEEKS, being duly sworn, deposes and says that he was one of the commissioners named in the act to incorporate the Milwaukee and Waukesha Railroad Company, approved February 11th, 1847. That on the 13th day of November, 1847, a notice was published in the Wisconsin, a daily newspaper printed in the city of Milwaukee, and on the 15th of November, in the Sentinel and Gazette, that a meeting of the commissioners named in said act for the purpose of deciding what action should be taken under said charter would be held at the City Hotel, in the city of Milwaukee, on Tuesday, the 23d of November, then instant, and was continued daily in both papers
53 until the time appointed for said meeting, a copy of which said notice is hereto attached, marked "Exhibit one."

That afterwards, and in pursuance of said notice, a meeting of said commissi'ners was held at said City Hotel, in the city of Milwaukee, on

said 23d day of November, 1847; that Paraclete Potter, Lemuel W. Weeks, Edward D. Holton, William A. Barstow, Norman Clinton, and A. W. Randall, being a majority of said commissioners, were present and participated therein; that said commissioners organized by appointing Lemuel W. Weeks president, and A. W. Randall secretary; and that a resolution was adopted by them that on the first Monday of February, 1848, books should be opened for subscriptions to the capital stock of said railroad at the Prairieville House, in the town of Waukesha, and at the City Hotel in the city of Milwaukee, under the supervision of said commissioners, and the proceedings of said meeting were ordered to be published in the Wisconsin, Milwaukee Sentinel, and American Freeman; and that said proceedings were so published
54 in the Wisconsin on the 26th day of November, 1847, and in the Milwaukee Sentinel on the 27th day of the same month, and that a copy of said proceedings is hereto annexed and marked "Exhibit number two."

That afterwards, and on the first Monday of February, 1848, in pursuance of the action so held by said commissioner's books of subscription to the capital-stock of said company were opened at Milwaukee and Waukesha, under the supervision of said commissioners, and subscriptions to the capital-stock made; that said books remained open for such subscriptions under their supervision until April 5th, 1849, when the sum of one hundred thousand dollars had been subscribed to the capital-stock of said company; that on said 5th day of April a meeting of said commissioners was held in pursuance of public notice, as prescribed by law, Lemuel W. Weeks, president of the board, in the chair, and A. W. Randall acting as secretary; that there were present of said commissioners Lemuel W. Weeks, Daniel Wells, jur., Byron Kilbourn, Alexander F. Pratt, Edward D. Holton, William A. Barstow, Alexander
55 W. Randall, and Josiah A. Noonan; that said board then and there ascertained and determined that one hundred thousand dollars had actually, and in good faith, been subscribed to the capital-stock of said company and five per cent. thereof paid in; that thereupon said board made a statement in pursuance of law, verified by the oaths of Alexander W. Randall, L. W. Weeks, Daniel Wells, jun., E. D. Holton, and Byron Kilbourn, and filed the same in the office of county treasurer of Milwaukee County, a copy of which is hereto annexed, marked "Exhibit number three;" that said board also directed that the books of subscription should be closed and that an election of directors should be held by the stockholders, at the city of Milwaukee, on the 10th day of May, 1849; that, in pursuance of said order, an election of directors was held by said stockholders on said 10th day of May, 1849, and Byron Kilbourn, Lemuel W. Weeks, Edward D. Holton, Alexander Mitchell, Erastus B. Wolcott, Anson Eldred, James Kneeland, John U. Tweety, and E. D. Clinton were elected directors of said company.

And this deponent further says that, at the meeting of said com-
56 missioners so as aforesaid held on the 23d day of November, 1847, at the City Hotel, in said city of Milwaukee, it was talked over, agreed and understood by them that, at the then next session of the territorial legislature the said William A. Barstow should apply to the legislature on behalf of said organization for an amendment of said charter extending the same from Waukesha to Madison, and thence to the Mississippi River, and that the act supplementary to an act to incorporate the Milwaukee and Waukesha Railroad Company, approved February 11th, 1847, approved March 11th, 1848, was at the then next session of the territorial legislature applied for and procured by the said

William A. Barstow, in pursuance of said agreement and understanding, and at the request and for the benefit of said commissioners, at their request so as aforesaid made; and further this deponent says not.

L. W. WEEKS.

Subscribed and sworn to before me this 20th day of January, A. D. 1875.

MELBERT B. CARY,
Notary Public, Mil. Co., Wis.

Exhibit number one.—Railroad notice.

57 The following named persons were by the act to incorporate the Milwaukee and Waukesha Railroad Company appointed commissioners to open books and receive subscriptions to the capital stock of said company, viz: Wm. A. Barstow, Norman Clinton, Alexander W. Randall, and Alexander F. Pratt, of Waukesha County, and Paraclete Potter, Daniel Wells, jun., Edward D. Holton, Byron Kilbourn, and Lemuel W. Weeks, of Milwaukee County, for the purpose of deciding what action shall be had in the premises. It is proposed and earnestly requested by the undersigned that all the above-named commissioners meet at the City Hotel in the city of Milwaukee, on Tuesday, the 23d day of November instant, at 2 o'clock p. m.

ONE OF THE COMMISSIONERS.

Dated November 12th, 1847.

See page 194, laws of Wisconsin, 1847. An act to incorporate the Milwaukee and Waukesha Railroad Company.

Exhibit number two.—Railroad meeting.

At a meeting of the board of commisioners of the Milwaukee
58 and Waukesha Railroad Company, held at the City Hotel, in the city of Milwaukee, on the 23d day of November, 1847, present, Paraclete Potter, Lemuel W. Weeks, Edward D. Holton, William A. Barstow, Norman Clinton, and A. W. Randall, the following proceedings were had:

Lemuel W. Weeks was appointed president, and A. W. Randall, secretary.

On motion it was—

Resolved, That, on the first Monday of February, 1848, books be opened for subscriptions to stock for said road at the Prairieville House, in the town of Waukesha, and the City Hotel in the city of Milwaukee, under the supervision of the respective commissioners of Waukesha and Milwaukee Counties, and notice be published accordingly, as required by law.

On motion it was—

Ordered, that the proceedings of this meeting be published in the Wisconsin, Milwaukee Sentinel and American Freeman.

L. W. WEEKS, *Prest.*

A. W. RANDALL, *Sec'y.*

Exhibit number three.

At a meeting of the board of commissioners of the Milwaukee and

Waukesha Railroad Company, held in pursuance to public notice
59 as prescribed by law, present, Lemuel W. Weeks, president of the board, Daniel Wells, jun., Byron Kilbourn, Alexander F. Pratt, Edward D. Holton, William A. Barstow, Alexander W. Randall, and Josiah A. Noonan, the following order among others was made, to wit:

It appearing to the board of commissioners from subscriptions presented, payment made, and from the receipts of the treasurer, that one thousand shares of stock of one hundred dollars each have been subscribed and five dollars on each share actually paid in as required by law, it is ordered that the statement of the secretary and two or more of the commissioners authenticated by their oaths that the subscriptions and payments have in good faith been made as required by the act of incorporation be deposited with the treasurer of the county of Milwaukee.

Dated April 5th, 1849.

L. W. WEEKS, *Prest.*

Attest:

ALEX. W. RANDALL, *Sec'y.*

STATE OF WISCONSIN, }
Milwaukee County, ss:

Alexander W. Randall, secretary, and L. W. Weeks, Daniel
60 Wells, jun., E. D. Holton, and Byron Kilbourn, commissioners, being duly sworn, do state that the subscriptions and payments mentioned in the foregoing order, which have been made, have been in good faith made.

ALEX. W. RANDALL, *Secy.*
L. W. WEEKS.
DANIEL WELLS, JUN.,
E. D. HOLTON,
BYRON KILBOURN,
Commissioners.

Subscribed and sworn to this fifth day of April, A. D. 1849, before me.

[L. S.] CHAS. K. WELLS,
Notary Public.

The defendant's counsel then called L. D. STONE, the defendant, as a witness, who was sworn, and testified that construction of the railroad from Milwaukee, through Madison, to Prairie du Chien and to Janesville was commenced under the aforesaid charters in the year 1849, and was completed from Milwaukee to Janesville in January, 1853, to Madison in 1854, and to Prarie du Chien, on the Mississippi River, in the year 1857; that during the time the road was being constructed several deeds of trust were executed by the company to trustees therein named, in the nature of mortgages, to secure bonds issued by the company, covering the whole line of the road. That default was made
61 in the payment of interest on said bonds in 1859, and that the mortgage-deeds of trust were foreclosed in chancery by the trustees in the district court of the United States for the district of Wisconsin in 1860, and that the whole road and its appurtenances were sold in January, 1861, by the United States marshal for the district of Wisconsin, on such foreclosure, to L. H. Meyer, John Catlin, Allan Campbell, W. Scholl, and Louis A. von Hoffman as purchasers.

The said defendant's counsel then gave in evidence chapter 121 of the

general laws of Wisconsin, approved October 10th, 1856, entitled "An act concerning railroads," as follows:

The people of the State of Wisconsin represented in senate and assembly do enact as follows:

SECTION 1. Any railroad company may borrow such sum or sums of money, at such rate of interest and upon such terms as said company or its board of directors shall authorize and agree upon and may deem necessary or expedient, and may execute one or more trust-deeds or
62 mortgages, or both, as occasion may require, on any railroad or railroads constructed or in process of construction by said company, for the amount or amounts borrowed or owing by such company, upon such terms and in such manner as such company or its board of directors shall deem expedient, and such company may make such provisions in such trust-deed or mortgage for pledging or transferring their railroad-track right of way, depot-grounds, rights, privileges, franchises, immunities, machine-houses, rolling-stock, furniture, tools, implements, appendages, and appurtenances belonging to or used in connection with such railroad or railroads in any manner whatever, as security for any bonds, debts, or sums of money that may be secured by such trust-deed or mortgage, as they shall think proper, and in case of any sale of any railroad or railroads, or any part thereof, constructed or in process of construction, by any railroad company, on or by virtue of any trust-deed or on foreclosure of any mortgage thereupon, the party or parties acquiring title under any such sale, and their associates, successors, or
63 assigns shall have and acquire thereby, and shall exercise and enjoy thereafter, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by said mortgage or trust-deed enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage, or contracting such debts, so far as the same relate and appertain to that portion of said road or the line thereof mentioned and described in and conveyed by said mortgage or trust-deed, and no further, as fully and absolutely in all respects as the corporation, shareholders, officers, and agents of such company might or could have done, therefore had not such sale or purchase taken place. Such purchaser or purchasers, their associates, successors, or assigns may proceed to organize anew and elect directors, distribute and dispose of stock, take the same or another name, and may conduct their business generally under and in the manner provided in the charter of such railroad company, with such variations in manner and form of organization as their altered circumstances and better convenience may seem to require: Provided, however, that no greater or en-
64 larged powers shall be exercised by the new organization than are conferred by the charter of such company.

SECT. 2. All rolling-stock of any railroad company used and employed in connection with its railroad shall be, and the same are hereby, declared to be fixtures, and all such property, and all additional right of way, depot-grounds, and other real property acquired *con*sequently to the executions of any such trust-deed or mortgage, which may be described or provided for therein, shall be subject to the same lien as is created by such trust-deed or mortgage upon the property therein described to which such company had title at the time of its execution. Every such mortgage or trust-deed upon any railroad in this State, and upon any part thereof, and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such recording endorsed on such mortgage or trust-deed by the secretary of state, shall be evidence

thereof, and the said mortgage or trust-deed so recorded shall have the same effect as if recorded in the several counties through which
65 said railroad may be built, and the record of such trust-deed or mortgage so made as above provided shall be evidence and notice of the lien hereby created upon all such subsequently-acquired property, to all persons interested, to the same extent and with the same effect as the same is now by law made notice of the time of such trust-deed or mortgage upon any property to which such railroad had title at the time of its execution.

SECT. 3. It shall and may be lawful for any railroad company, annually or oftener, as its board of directors shall deem expedient, to set apart and appropriate a sum of money not exceeding fifty per cent. of its net earnings or resources in any one year, after paying the current expenses of this road and the interest and its outstanding indebtedness, in order to sink, redeem, pay off, cancel, or discharge the indebtedness of said company incurred in the construction and equipment of its road; and said sums so set apart shall be annually applied to the payment and discharge of such debts of said company as shall be due, and to the purchase and redemption of the outstanding evidences
66 of indebtedness of said company, upon the best and most favorable terms, to be held or cancelled by said company, as the board of directors thereof shall deem most for the interest of said company.

SECT. 4. That all mortgages or trust-deeds heretofore executed by any railroad company are hereby declared to be included within and subject to the provisions of this act as fully and effectually as if its provisions had been incorporated in its charter prior to and at the time of the execution of such mortgages or trust-deed: Provided, however, That such railroad company shall first accept of the provisions of this act by a resolution of its board of directors, and shall cause a copy thereof, under the certificate of its secretary, with the corporate seal thereof attached thereto, to be filed in the office of the secretary of state: And provided further, That this section shall not be construed in anywise to affect any liens acquired by any person or persons, corporation, or body-politic, upon such subsequently-acquired property at any time after the execution of such mortgage, and prior to the filing of the acceptance
67 of the provisions of this act, as above provided, in the office of the secretary of state.

SECT. 5. All suits brought or instituted against any railroad corporation created by the laws of this State, except appeals of the awards of commissioners or jurors appointed under its act of incorporation to appraise compensation and damages for property taken for the use of such corporation, shall be brought in same county through which such railroad runs, and no proceedings shall be had or entertained in any such suit unless the process shall have been duly served upon the president, secretary, superintendent, or general attorney of such corporation.

SECT. 6. In case of any sale of any railroad, or of any portion of any railroad, with its appurtenances, property, right of way, franchises, and privileges, or any of them, under and by virtue of any trust-deed or mortgage, now executed or that may be hereafter executed, upon the same, such sale, when made in accordance with the provisions contained in such trust-deed or mortgage, shall be absolute, unless the said company, or any subsequent incumbrances, shall, within one year
68 from and after the date of such sale, redeem said railroad and property so sold, by paying the amount of the purchase-money on such sale and the interest thereon, at the rate of twenty per cent. per annum, in the manner provided by law, and any such sale shall not be

required to be made in accordance with any other law of this State for the sale of real estate under foreclosure of mortgage or otherwise.

SECT. 7. This act shall take effect and be in force from and after its passage.

The defendant also gave in evidence Chapter 308 of the laws of 1860, entitled "An act to facilitate and authenticate the formation of a corporation by the purchase of the Milwaukee and Mississippi Railroad Company," as follows:

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECT. 1. In case the railroad of the Milwaukee and Mississippi Railroad Company, or any part thereof, shall be sold by virtue of any mortgage or mortgage', or deed or deeds of trust, either by foreclosure
69 or other proceedings in law or equity, or by advertisement in pursuance of a power or authority in any such mortgage or deed of trust contained, the purchaser or purchasers in any such case, his or their associates, successors, or assigns, if desiring to form a corporation under or by virtue of the laws of this State, may file in the office of the secretary of state of this State a certificate specifying the name of the said corporation, the number of directors and their names for the first year, so designated in said certificate or as elected by the said purchaser or purchasers, their successors, their associates, or assigns; which certificate shall be signed by the said purchaser or purchasers, or the survivors of them, or their or his successors or assigns, and upon the filing of any such certificate the persons who shall be named therein shall be a body politic and corporate by the name stated in such certificate; and the said corporation shall possess all the privileges, powers, authorities, and capacities acquired by the said purchaser or purchasers, or possessed by the Milwaukee and Mississippi Railroad Compa-
70 ny, by virtue of the charter of said company, and of any law of this State, and shall likewise have power by a vote of a majority in interest of the stockholders of the said corporation, and by instruments in writing, to assume any liabilities secured by any previous mortgage or mortgages to that under which said sale and purchase is made, with the restrictions and limitations hereinafter mentioned.

SECT. 2. The stock basis of the said new company shall not exceed seven millions and five hundred thousand dollars.

SECT. 3. The said corporation shall have power to issue as many classes of preferred stock as there are mortgage liens upon said road, and as may be agreed upon by those in interest not exceeding in amount four million and five hundred thousand dollars, but no dividends shall be declared in any one year beyond eight per centum, until the capital stock of said company shall have been reduced to six millions.

SECT. 4. The preferred stockholders of the first and second class shall elect the directors under the new organization until a dividend shall have been earned in all the preferred shares of the several
71 classes, when all of the preferred stockholders shall elect the directors until a dividend shall have been earned on all the shares of the said company, both preferred and common stock, and thereafter all the shareholders of the said company shall elect the directors.

SECT. 5. The directors of the said corporation shall have no power to borrow money, or mortgage the said railroad, its franchise, or any of its property, unless duly authorized by a vote of two-thirds of the preferred stockholders in amount, but such power or authority shall not be

granted except at some general or special meeting of said preferred stockholders, of which thirty days' notice shall be given, and of the object of said meeting.

SECT. 6. All expenses of operating said railroad shall be paid monthly from its earnings before any of its earnings shall be applied to the payment of dividends to any of its stockholders, and when not sufficient to pay expenses, repairs, and damages, from any cause the directors may call a special meeting of the stockholders, who shall provide the
72 means to meet such expenses, repairs, and damages, and in case they should provide such means by loans, no dividend shall thereafter be made to any of its stockholders until said loans are paid.

SEC. 7. All surplus earnings, after the payment of expenses and repairs, and after payment of dividends to the preferred stockholders, not exceeding eight per cent. in any one year, shall be invested in the purchase of the preferred shares of the said company until they shall command par in the city of New York, or until the preferred shares shall have been reduced in amount to three millions of dollars, and thereafter the surplus earnings shall be invested in the purchase of common stock, until the whole capital stock of said company, both preferred and common, shall have been reduced to six millions of dollars and shall earn a dividend on that amount; said stock to be cancelled as fast as purchased.

SEC. 8. When the capital stock shall have been reduced to six millions of dollars and shall have earned a dividend on that amount, in any one year, equal to seven per cent. on the dollar, dividends shall be declared on all the stock of said company, instead of purchasing and
73 sinking the shares as aforesaid, unless otherwise determined by a vote of two-thirds in amount of all the stockholders.

The defendant then gave in evidence the articles of association made by the purchasers of said railroad forming the Milwaukee and Prairie Du Chien Railway Company, as follows:

Whereas the railroad of the Milwaukee and Mississippi Railroad Company has been sold in pursuance of certain foreclosure proceedings had in the United States district court for the district of Wisconsin, on the complaint of George S. Coe, trustee, under a mortgage or deed of trust, made by the said Milwaukee and Mississippi Railroad Company dated June 15th, 1852, and of Isaac Seymour, trustee, under several mortgages or deeds of trust, made by the said Milwaukee and Mississippi Railroad Company, and dated respectively April 1st, 1853; June 1st, 1855; July 1st, 1856, and September 17th, 1857, to the records of which court and the proceedings had therein in said complaints reference is made
74 for a more full and particular statement thereof.

And whereas the undersigned have purchased said road at said sales, and all its property real and personal, franchises, and privileges:

Now, therefore, be it known that we, the undersigned, purchasers as aforesaid, being desirous of forming a co-operation under and by virtue of the laws of the State *of the State* of Wisconsin, do hereby associate together for that purpose, and do hereby declare the following to be the certificate or articles of assocation, and we execute the same in duplicate to the end that one may be filed with the secretary of state for the State of Wisconsin, and the other to remain in the records of our corporation as a record of our corporate rights, privileges, and immunites.

First, our corporate name shall be the "Milwaukee and Prairie Du Chien Railway Company."

Second, the number of directors shall be nine, and a majority shall be citizens or residents of the city of New York.

For the first year, and until others are legally chosen in their place, the following persons are the directors:

75 Lewis H. Meyer, Wm. P. Lynde, Allan Campbell, Wm. Schall, John Wilkinson, John Catlin, Hercules L. Dousman, Geo. Smith, and N. A. Cowdrey. Our stock basis shall not exceed $7,500,000 divided into 75,000 shares of one hundred dollars each. The said shares of capital stock shall be subdivided as follows:

An amount not exceeding $3,651,400 or 36,514 shares shall be set apart and designated as first-class preferred stock; and the full sum, $100 per share, we hereby declare and acknowledge to be paid thereon, except on so much of this class as is hereafter designated as scrip stock. The said first-class preferred stock shall be entitled to an interest of eight per cent. per annum for each and every year before any payment of interest or dividends to any other class of stockholders. And whenever the company earn sufficient to pay a greater sum on all classes of stock then they shall share pro rata in any dividend greater than eight per cent. per annum. Of the said first-class prefer'ed stock an amount not exceeding $2,556,000 or 25,560 shares shall be set apart and designated as scrip stock; this scrip stock shall not at any time

76 exceed the amount of the mortgage-bonds hereinafter named. On this stock we hereby declare and acknowledge the sum of one dollar per share to be paid. The scrip stock shall not be subject to any assessment, and shall entitle the person in whose name it stands upon our books to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any dividend or other profit or increase from the income or assets of this company. It shall be issued in certificates of ten shares each, and shall accompany each mortgage-bond of the company. (If any mortgage-bonds of $500 each are issued by the company, then so many of said certificates as are necessary may be issued in the sum of five shares each.) The holder thereof shall have the right, at any time within 10 days after any dividend shall have been declared and become payable on such first-class preferred stock, to pay the full sum of one hundred dollars per share by the surrender to the company of the mortgage-bond named by its number in his certificate, and upon surrendering said certificate and bond he shall be en-

77 titled to receive therefor the same number of shares of first-class preferred full-paid stock and entitled to dividends.

An amount not exceeding $1,086,800, or 10,868 shares of said capital stock, shall be set apart and designated as second-class preferred stock, and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon. This second-class preferred stock shall be entitled to an interest of seven per cent. per annum for each and every year after paying the interest on their mortgage-bonds, the amount provided for the sinking-fund, and an interest or dividend of eight per cent. per annum for each and every year on the first-class preferred stock, and before the payment of dividends to any other class of stockholders than those above named. And whenever the company earns sufficient to pay a greater sum than eight per cent. on said first-class preferred , and seven per cent. on said second-class preferred stock, as hereinbefore provided, and seven per cent. on the common stock, then the said second-class preferred stock shall share pro rata in any greater dividend which may be made by the company than as above

78 named.

The balance of said capital stock ($2,761,800, or 27,618 shares)

shall be designated as common stock; and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon. After the preferred stock above described shall have been reduced in amount to $3,000,000, as now required by law, the common stock may be increased to the sum of $3,000,000; but the increase of $238,200 shall not be sold by the company at less than $100 per share, cash at the time of sale, and the stockholders shall have it at their option for thirty days to take their pro rata at par.

Fourth. This corporation shall have all the powers, privileges, and immunities of railroad companies under the laws of Wisconsin, and especially to sue and be sued, to acquire, use, and sell, bargain and convey all kinds of property, real and personal, necessary or convenient to operate, use, and maintain said railroad, or the part or the whole of any other railroad hereafter acquired by them within the State of Wisconsin; to make any by-laws for the government and management
79 of the corporation, or its officers, not contrary to the laws of Wisconsin, or of the United States; to make, have, and use a common seal, and the same to renew and alter at pleasure. And they are hereby invested with all the powers, privileges, and immunities which are necessary or convenient to carry into effect the purposes and objects of this corporation. They are hereby authorized to transport, take, and carry property and persons by railway, by force and power of steam, or of animal, or of any mechanical or other power, or of any combination of them, which said company may choose to apply, between the city of Milwaukee and the Mississippi River, and to either, and across said river, and to and from all intermediate places. They are also authorized and empowered to lease, buy, purchase, receive, hold, use, sell, and convey all the property and franchises, furniture and equipments, real and personal, of the Milwaukee and Mississippi Railroad Company; also, the capital stock thereof, and any or all mortgage-bonds, or other evidences of debt, made by it; and when purchased by this company they shall have all the legal and equitable rights that the
80 holders thereof had before their sale to this company. Also to support, maintain, hold, use, sell, and convey one or more steam ferry-boats between Prairie du Chien and McGregor, in the State of Iowa; also to purchase, hold, use, sell and convey upon this line of railway, or elsewhere, any materials, engines, cars, steam ferry-boats, and any other property, real or personal, necessary or convenient for this corporation, and for their use in transporting persons, goods, and property, to purchase, receive, and hold, and to sell and convey such real estate as may be necessary and convenient in accomplishing the object for which this company is incorporated. Also to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property. The said corporation shall have power to issue an amount not exceeding two thousand four hundred and twenty-eight bonds of one thousand dollars each, and two hundred and fifty-six bonds of five hundred dollars each, (in all $2,556,000,) bearing an interest of seven per cent. per annum, the principal and interest payable in the city of New York; the interest semi-annually, the principal in the
81 year A. D. 1891, with a provision that if the company make default in the payment of interest or sinking-fund, as hereinafter provided, for six months, the principal shall thereupon become due without demand or notice; and, also, whenever the bonds are designated as hereinafter provided to be paid by the trustee or trustees, then the principal of said bonds so designated shall thereupon become due, and to secure the same by a mortgage or trust-deed upon this franchise

and all the real estate and personal property of the company, and to embrace the entire corporate property and all its franchises and privileges. It shall also contain a provision for a sinking-fund, by which the company shall be obliged to pay to the trustee or trustees named in the mortgage, or to their successors, such sums of money as shall amount to the difference between $204,480 and the interest for each year on the outstanding mortgage-bonds; this amount to be paid in equal sums, as near as may be on the first days of April and October in each year, commencing October 1st, 1862, with the payment of $13,000. The
82 trustee or trustees shall, immediately after any payment is made them, designate by lot so many of the bonds as they have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the numbers designated in two or more of the newspapers printed in the city of New York, and shall continue said notice once each week until the first day of the succeeding January or July, when the interest on the bonds so designated shall cease; and neither the company or their successors shall be any longer liable for the payment of the interest or principal thereof. Said trustee or trustees shall, on said first day of each January and July, pay the principal and interest of said bonds, and cancel and surrender the same to the company, and also the scrip certificate of stock accompanying said bonds. The company shall keep a proper registry or account of all the bonds thus paid by them, or designated to be paid as aforesaid, and the number of bonds thus cancelled shall be reported by said company to the stockholders at each annual meeting, and said bonds shall be presented and shown at said meeting. The bonds secured by said mortgage shall
83 be convertible, at the option of the holder, into the first-class preferred stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock. The said mortgage-deed and bonds shall be signed by the president and secretary, and the seal of the company shall be affixed thereto. And except as herein expressly provided, the corporation shall have no power or authority to mortgage or otherwise encumber their property, real or personal, unless the assent in writing of a majority in interest of the owners and holders of all the shares of capital stock issued by said corporation shall be first had and obtained, authorizing the same. No assent shall be taken from agents or by proxy, unless the power of attorney held by the agent shall expressly authorize the particular assent asked for. They shall have power to build and construct any new line of railway necessary or convenient in straightening the old line or in extending it as to conform to the requirements of the charter of the Milwaukee and Mississippi Railroad Company, or the law of the State,
84 whenever or wherever the adjoining proprietors or inhabitants will donate the right of way and grade the line; but no expenditure shall be made for this purpose unless it is from the surplus earnings of the company after providing for the payment of interest on all its mortgage-debt, the sum due the sinking-fund, and dividends on the preferred stock.

Fifth. The immediate government and direction of the affairs of the company shall be vested in a board of nine directors; and after the present directors' time expires, they shall be chosen by the stockholders of said company in the manner hereinafter provided, and shall hold their office until the next annual meeting of the company, or until others are duly elected and qualified to take their places as directors. The said directors shall elect one of their number president of the board, who shall also, by virtue thereof, be president of the company, and shall

also elect a vice-president from one of their number. They shall also appoint a secretary, and such other officers or agents as the necessity or convenience of the company require. A majority of the directors of the company shall constitute a quorum to do business; a less number
85 may adjourn from time to time. In all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy, and the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place in the month of April, of each year, and upon such notice as said company, in their by-laws, may prescribe; and if no regulation as to the time and place of the meetings of stockholders shall be made by the company, then the directors shall appoint the same. In case it shall so happen that an election of directors shall not be made on the day appointed for that purpose, said corporation shall not, for that cause, be dissolved, but said election may be had on any day to which the stockholders shall adjourn or which shall be appointed by the directors. And said directors shall have power to fill any vacancy which may occur in their board by death, resignation, or otherwise.

The said directors shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem proper and need-
86 ful touching the disposition and management of the stock, property, estate, and effects of said company, not contrary to those established by the stockholders or to this act or to the laws of the State of Wisconsin or of the United States, the transfer of shares, the duties and conduct of their officers, agents, and servants, and all matters whatever which may appertain to the concerns of said company. Also to petition and apply for any law of the State of Wisconsin in alteration thereof, and before the same becomes binding shall submit the same to the stockholders for their approval.

Sixth. The signing of this certificate or articles of association is herewith declared to be a special meeting of the preferred stockholders, and a vote, and the assent of the preferred stockholders to borrow the money and to mortgage the road for the amount, as above set forth, and also to be a waiver of any notice required of the meeting on that subject.

Seventh. The certificate' of stock issued by this company shall, upon their face, be made subject to all the terms and conditions of these articles of association.

Eighth. Upon the dissolution of this corporation, after the payment of all its debts, the remaining assets shall be divided among
87 the different classes of stockholders according to their preferences, that is to say, the first-class preferred stock, excepting the scrip stock, shall be first paid in full, and then the second-class preferred shall be paid in full, and the balance divided among the common stockholders pro rata.

But this corporation shall not be dissolved by any act of the company without an affirmative vote of two-thirds of each class of stockholders.

Ninth. These articles of association may be modified, altered, or amended at any annual or special meeting duly called, at which a majority in interest of each class of stockholders shall be present and voting in the affirmative. But no stockholder shall become liable to pay any money by any such action unless he shall have voted therefor or assented thereto.

Tenth. Annual meetings of the stockholders shall be held in the State of Wisconsin, in the month of April in each year after 1861, which meeting shall be called by the directors, who shall specify the time and

place of holding the same. And thirty days previous to any an-
88 nual meeting the directors shall send through the post-office to each stockholder, to the address as shown by the company's books, a full and specific statement of all the business, acts, and doings of the corporation up to the first day of January preceeding.

Witness our hands at the city of Milwaukee, this 21st day of January, 1861.

L. H. MEYER.
JOHN CATLIN.
ALLEN CAMPBELL.
W. SCHALL.
LOUIS A. VON HOFFMAN.

The defendant next gave in evidence the deed of the Milwaukee and Prairie Du Chien Railway Company to the Milwaukee and St. Paul Railway Company, as follows:

This indenture, made the thirty-first day of December, one thousand eight hundred and sixty-seven, between the Milwaukee and Prairie Du Chien Railway Company, a corporation duly formed and organized under the laws of the State of Wisconsin, of the first part, and the Milwaukee and St. Paul Railway Company, a corporation also duly formed and organized under the laws of the State of Wisconsin, of the second part:

89 Whereas the stockholders of the Milwaukee and Prairie Du Chien Railway Company have duly authorized in writing the sale of their railway and other property to the Milwaukee and St. Paul Railway Company, as more fully appears by their articles of association as amended under date of December 4th, 1867, to which reference is here made:

Now, therefore, this indenture witnesseth that the said party of the first part, in consideration of the premises, and of the sum of five millions of dollars, to it duly paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, convey, and transfer unto the said Milwaukee and St. Paul Railway Company, party hereto of the second part, its successors and assigns, all and singular, the railway heretofore known as the Milwaukee and Prairie Du Chien Railway, extending from its terminus or depot in the city of Milwaukee, and State of Wisconsin, to the city of Madison, in said last-mentioned State, and running thence westerly through the city of Madison aforesaid, to the Mississippi River, at or near Prairie Du Chien,
90 and also an island in the said Mississippi River, opposite Prairie Du Chien aforesaid, and also the branch of said railway running or to run from a point at or near Milton to a point at or near Monroe, and also all other property whatsoever, both real and personal, of the said Milwaukee and Prairie Du Chien Railway Company, and all franchises, rights, and things to the said Milwaukee and Prairie Du Chien Railway Company belonging.

To have and to hold the said railway, with its equipments and appurtenances, and the property, rights, and franchises hereinbefore described, unto to the said party of the second part, its successors and assigns, to the only proper use, benefit, and behoof of the said party of the second part, and of its successors and assigns; subject, nevertheless, to the payment of certain eight per cent. bonds to the aggregate amount of three millions six hundred and eighty-four thousand dollars, and certain seven and three-tenths per cent. bonds, to the aggregate amount of one mil-

lion and three hundred and sixteen thousand dollars, bearing even date herewith, issued by the said party hereto of the second part, to
91 secure the payment of five millions of dollars of the purchase-money of the said premises, upon the terms and conditions and with the priorities in a certain deed of trust or mortgage, bearing even date herewith, duly executed and delivered by the said party of the second part to Charles Moran, Russell Sage, and William H. Neilson, mentioned and set forth.

In witness whereof the said Milwaukee and Prairie Du Chien Railway Company have caused this indenture to be subscribed in their corporate name, by their president and secretary, and have caused their corporate seal to be hereto attached.

MILWAUKEE AND PRAIRIE DU CHIEN RAILWAY COMPANY,
By ALEX. MITCHELL, *President.*
[L. S.] ALANSON CARY, *Secretary.*

Sealed and delivered in the presence of—
DAVID C. GREEN.
H. CROCKER.

UNITED STATES OF AMERICA,
State of Wisconsin, City and County of Milwaukee, ss:

Be it remembered that on the 20th day of May, A. D. 1868, before me, a notary public duly commissioned in and for said city and county
92 and duly authorized to administer oaths and take acknowledgements of deeds, came Alexander Mitchell, president, and Alanson Cary, secretary of the Milwaukee and Prairie Du Chien Railway Company, who, being by me duly sworn, did respectively depose and say that they are the president and secretary of the said railway company; that they know the seal of said company, and that the seal affixed to the foregoing instrument is the common and corporate seal of said company and was affixed thereto by order of the board of directors of said company; and that they signed their respective names thereto as president and secretary by the like order, and they severally acknowledge the execution thereof on behalf of said company for the purpose therein expressed. And I certify that they are known to me to be the persons they are above described to be and who executed this instrument.

[L. S.] JOHN JOHNSTON,
Notary Public, Milwaukee County.

The defendant also gave in evidence proof of change of name of Milwaukee and St. Paul Railway Company to Chicago, Milwaukee
93 and St. Paul Railway Company, as follows:

At an adjourned meeting of the Milwaukee and St. Paul Railway Company, held in the city of Milwaukee on the 7th day of February, 1874, at which were present in person and by proxy a majority of all its shareholders, the following resolutions were unanimously adopted:

Resolved, That the corporate name of this company be changed to the Chicago, Milwaukee and St. Paul Railway Company.

Resolved, That the secretary of the company file in the office of the secretary of state, on the 11th day of February, 1874, a copy of the above resolution, certified under his hand and the seal of the company, in order that the change of same take effect from that date.

{THE SEAL OF THE COMPANY UNDER THE NAME OF THE "CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY."} I, R. D. Jennings, secretary of the Milwaukee and St. Paul Railway Company, certify the foregoing to be a true and correct copy from the minutes of a meeting of the stockholders of said company held at their office, in Milwaukee, February 7th, 1874.

Witness my hand and the corporate seal affixed this seventh day of February, 1874.

R. D. JENNINGS,
Secretary.

94 Recorded February 11th, 1874.

STATE OF WISCONSIN.
Secretary's Office, ss:

The secretary of state of the State of Wisconsin hereby certifies that the foregoing has been compared with the original record in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof I have hereunto set my hand and affixed the great seal of the State at the capitol, in Madison, this second day of June, A. D. 1874.

[L. S.]

PETER DOYLE,
Secretary of State.

The defendant's counsel further proved by the witness L. D. Stone that the fare established by the company for transportation of passengers from Madison to Janesville was one dollar and sixty cents, at the rate of four cents per mile, and that had been the rate for more than six years prior to May 13th, 1874; that he was acquainted with railroad business and had been engaged in it for nearly twenty years,
95 and that the rate charged by the company was no more than a reasonable rate and compensation.

The defendant further introduced proof to show that the Chicago, Milwaukee and St. Paul Railway Company was a corporation organized and existing under the laws of the State of Wisconsin; that it was formed under the provisions of chapter 121 of the laws of 1856, which chapter was incorporated into the revised statutes of Wisconsin of 1858 as a part of chapter 79; that said corporation was organized and formed on the 5th day of May, 1863, by the purchasers of a portion of the La Crosse and Milwaukee Railroad at a sale of said road by the marshal of the district of Wisconsin on the foreclosure of a mortgage trust-deed given by the last-named company to Green C. Bronson, James T. Sautter, and Shepherd Knapp, as trustees; that articles of association were made, signed, and filed by said purchasers in the office of the secretary of state of the State of Wisconsin, under and in pursuance of the statute above named, on the said 5th day of May.

(Insert after the close of defendant's testimony as follows:)

The defendant rested, and the State introduced the following testimony:

96 The State also offered & read in evidence the following acts of the legislature of the State of Wisconsin:

1st. An act entitled "An act to incorporate the Madison and Prairie Du Chein Railroad Company," approved March 24, 1852, being chap. 149 of the laws of 1852.

2. An act entitled "An act to consolidate the capital stock of the Madi-

son & Prairie Du Chien Railroad Company with the capital stock of the Milwaukee & Mississippi Railroad Company," approved June 25th, 1853, being chapter 320 of P. & L. laws of 1853.

In supreme court.

THE STATE OF WISCONSIN
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL Railway Company.

STATE OF WISCONSIN,
Milwaukee County, ss:

James Kneeland, being duly sworn, says that he was one of the first board of directors of the Milwaukee and Waukesha Railroad Company; that said first board of directors was elected on the tenth day of
97 May, A. D. 1849; that said company was organized on that day, and that said company was not organized prior to that day.

JAMES KNEELAND.

Subscribed and sworn to before me this 17th day of September, A. D. 1874.

GEO. H. NOYES,
Notary Public, Milwaukee County, Wis.

At a meeting of the board of commissioners of the Milwaukee & Waukesha Railroad Company, held in pursuance to public notice as prescribed by law—

Present, Samuel W. Weeks, president of board; Daniel Wells, jr., Byron Kilbourn, Alexander F. Pratt, Edward D. Holton, William A. Barstow, Alex. W. Randall, and Josiah A. Noonan—

The following order, among others, was made, to wit:

It appearing to the board of commissioners, from subscriptions presented, payments made, and from receipts of the treasurer, that one thousand shares of stock of one hundred dollars each had been subscribed, and five dollars on each share actually paid in, as required by law:

98 It is ordered that the statement of the secretary and two or more of the commissioners, authenticated by their oaths, that the subscriptions and payments have in good faith been made as required by the act of incorporation be deposited with the treasurer of the county of Milwaukee.

L. W. WEEKS, *Prest.*

Attest: ALEX. W. RANDALL.
Dated April 5th, 1849.

STATE OF WISCONSIN,
Milwaukee County, ss:

Alex. W. Randall, secretary, and L. W. Weeks, Daniel Wells, jr., E. D. Holton, and Byron Kilbourn, commissioners, being duly sworn, do state that the subscriptions and payments mentioned in the foregoing order, which have been made, have been in good faith made.

ALEX. W. RANDALL,
Secretary.

L. W. WEEKS,
DANIEL WELLS, JR.,
E. D. HOLTON,
BYRON KILBOURN,
Commissioners.

99 Subscribed and sworn to this fifth day of April, A. D. 1849, before me.

CHARLES K. WELLS, [SEAL.]
Notary Public.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Edward Ehlers, treasurer of the county of Milwaukee, in the State of Wisconsin, do hereby certify that the foregoing is a copy of a certain paper now on file in my office, endorsed as being a certificate and statement of the subscriptions of stocks in the Milwaukee and Waukesha Railroad Company; and I further certify that such copy has been compared by me with the original paper now on file in my office, and that it is a correct transcript therefrom, and of the whole shares of stock subscribed.

In witness whereof I hereto signed my name.

EDWARD EHLERS,
Treasurer, Milwaukee County.

Milwaukee, this 18th day of September, 1874.

100 1863. The testimony here closed.

And the said defendant's counsel then and there asked said circuit judge to charge and instruct said jury as follows, to wit:

1st. The railroad from Madison to Janesville having been chartered by the Territorial legislature prior to the adoption of the State constitution, and the charter having conferred upon the company the right to fix its own charges for the transportation of passengers, it was not competent for the legislature of 1874 to pass a law fixing the charges of the company for the transportation of passengers on this road, for the reason that it is in conflict with the Constitution of the United States, as impairing the obligation of contract.

2nd. The Territorial legislature having granted a charter for the construction of this railroad, and the same having been accepted by the company and the road constructed under it, said charter, on its acceptance by the company, became a valid and binding contract between the company and the Territory, as of the day on which it was passed,

101 and said charter, by its terms, having granted to the company the right to fix its own charges for the transportation of passengers over said road, the act of the legislature of 1874, known as chapter 273, entitled "An act relating to railroads, express, and telegraph company' in the State of Wisconsin," is, so far as it attempts to fix the charges for the transportation of passengers over said road without the consent of said company, *is* unconstitutional and void, as being in contravention of the Constitution of the United States.

3rd. The charter of the company having expressly granted to the company the right to fix its charges for the carriage of passengers over its road, and the road having been constructed under this grant and upon the solemn faith of the government thus pledged to the company, the right so to fix said charges became fixed and vested in the company, and it was not competent for the legislature of Wisconsin for the year 1874 to pass an act taking from the company this right without the consent thereto of the company, and the chapter 273 of the laws of 1874, entitled "An act relating to railroad, express, and telegraph companies in the State of Wisconsin," in so far as it attempts to fix the

102 rates of this company for the carriage of passengers on this road and to take that right from said company is unconstitutional and void, as being in contravention of the Constitution of the United States.

But the said circuit judge did then and there refuse to instruct said jury as requested, and did refuse to give each of said instructions separately as requested by said defendant's counsel. And thereupon the said defendant's counsel did then and there except to each one of said refusals, separately, as made by said circuit judge, and because none of said testimony, rulings, requests, refusals, decisions, and exceptions appear in the record and proceedings of the trial of this cause, and because the said L. D. Stone feels aggrieved by such opinions, directions, & judgments of the , in matters of law, & has alleged exceptions thereto, which have been reduced to writing, as above, & found conformable to the truth of the case, and now here, in the prayer of the said defendan*d*, allowed and signed by the judge of said court, at the same term, to wit, the Nov. term, A. D. 1874, to wit, on this 30th day of January, A. D. 1875.

ALVID STEWART, *Judge.*

103 (Indorsed as follows, to wit:) Filed Jan'y 30th, 1875. L. D. Frost, dep. clerk.

104 STATE OF WISCONSIN,
Supreme Court, ss:

The State of Wisconsin to the judge of the circuit court of the county of Dane, in said State, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a suit which was duly tried in the circuit court of Dane County aforesaid, before you, between the State of Wisconsin, plaintiff, and L. D. Stone, defendant, in an action of misdemeanor, manifest error hath intervened to the great damage of the said L. D. Stone, as by his complaint we are informed; and we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, do command you, that if judgment be thereupon given, then you send to the judges of the supreme court of the State of Wisconsin, distinctly and openly, under your seal, with all convenient dispatch, a transcript of the record and proceedings of the suit aforesaid, with all things concerning the same, and this writ, so that they may have the same at this term of our said supreme court,
105 begun & held at Madison, in the State aforesaid, on the second Tuesday of January, anno Domino one thousand eight hundred and seventy-five, that, the record and proceedings aforesaid being inspected, we may cause to be further done, for correcting that error, what of right and according to law and the rules of our said court, ought to be done.

Witness the Hon. E. G. Ryan, chief-justice of the supreme court of the State of Wisconsin, at Madison, this ninth day of February, A. D. 1875.

[SUP. CT. SEAL.] LA FAYETTE KELLOGG, *Clerk.*

Attest:
JOHN W. CARY,
Atty. for Plff. in Error.

(Indorsed as follows, to wit:) State of Wisconsin supreme court. L. D. Stone, plff. in error, against the State of Wisconsin, deft. in error. Writ of error. Filed Feb'y 10, 1875. B. C. Slaughter, dep. clerk.

106 STATE OF WISCONSIN:

Circuit court for Dane County

At a regular term of the circuit court in and for Dane County, State of Wisconsin, held at the court-house in the city of Madison, on the 4th day of November, in the year of our Lord eighteen hundred and seventy-four, the following proceedings, inter alia, were had, to wit:

To wit, January 21st, A. D. 1875.

Court opened by proclamation; Hon. Alva Stewart, judge, presiding.

THE STATE OF WISCONSIN
vs.
L. D. STONE. } Violation of Potter law.

And now come the State of Wisconsin, by B. W. Jones, dist. atty., and the defendant in his own proper person, with John W. Cary, his attorney, and, issue having heretofore been joined herein, proceed to trial by jury.

Whereupon a jury is called and sworn as follows, to wit: Richard Butler, John Wall, R. T. Cameron, H. Cramer, N. Johnson, J. I.
107 Berge, I. W. Dopp, Wm. McLaughlin, P. T. Dailey, John Lyford, John Douglas, Isaac Smith.

Thereupon the following-named witnesses are severally sworn and examined, to wit, William Welch, 1; L. D. Stone, 2.

And the jury having listened to the argument of counsel, and received the instructions of the court, say they find the defendant guilty in manner and form as charged.

I, B. Esser, do hereby certify that the foregoing is a true copy of the minutes in the above-entitled action, now of record in my office.

[CIR. CT. SEAL.] B. ESSER, *Clerk.*

103 STATE OF WISCONSIN,
Circuit Court for Dane County, Dane County, ss:

I, B. Esser, clerk of said court, do hereby certify that the foregoing and annexed paper-writings are the original appeal-papers from the court below, order for bail, &c., recognizance, bill of exceptions, and writ of error from supreme court, which have been filed in my office, in the action wherein the State of Wisconsin is plaintiff, and L. D. Stone is defendant, and that the same are hereby transmitted to the judges of the supreme court of the State of Wisconsin, in pursuance of said notice of appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Madison, this 11th day of February, A. D. 1875.

[CIR. CT. SEAL.] B. ESSER, *Clerk.*

109 Be it remembered that at a term of the supreme court of the State of Wisconsin, begun and held at the capitol in Madison, the seat of government of said State, on the second Tuesday, to wit, on the twelfth day of January, A. D. 1875, on the fifty-third day of the term, to wit, on the thirtieth day of April, A. D. 1875—present: E. G. Ryan, chief-justice, and Orsamus Cole and William P. Lyon, associate

justices of said court—the following proceedings were had, inter alia, to wit:

Circuit court, Dane County, State of Wisconsin.

L. D. STONE, PLAINTIFF IN ERROR,
vs.
THE STATE OF WISCONSIN, DEFENDANT IN error.

This cause came on to be heard on the transcript of the record, and on exceptions to the rulings and decision of the circuit judge of Dane County, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court that the writ of error issued herein be, and the same is hereby, dismissed, and that the exceptions to the rulings and decision of the circuit judge of Dane
110 County in this cause be, and the same are hereby, overruled; and it is further ordered that this cause be removed to the circuit court of Dane County, with directions to proceed to judgment.

STATE OF WISCONSIN,
Supreme Court, ss:

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order and judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this fifth day of May, A. D. 1875.

[SUP. CT. SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

(Indorsed as follows, to wit:) State of Wisconsin. Supreme
111 court. L. D. Stone, plaintiff in error, against The State of Wisconsin, defendant in error. Remittitur. Filed June 17, 1875. B. C. Slaughter, dep'ty clerk.

112 Supreme Court, January term, 1875.

STATE OF WISCONSIN
vs.
I. D. STONE.

By the court:

The defendant, who was the passenger-agent at Madison of the Chicago, Milwaukee and St. Paul Railway Company, was prosecuted criminally under chap. 273 of the laws of 1874 (known as the Potter law) for exacting and receiving from a passenger on the railway of that company from Madison to Janesville more than the legal fare established by that act.

The defendant was tried in the municipal court of Madison, and was convicted and fined. He thereupon appealed to the circuit court for Dane County, and a trial in that court resulted in a verdict of guilty. Exceptions were allowed and signed by the judge, pursuant to the statute, (R. S., chap. 180, sec. 7,) and a stay of proceedings granted.

We find a writ of error in the record; but inasmuch as no final judgment has been pronounced, the writ does not lie. (Bennett vs. the

State, 24 Wis., 57; Crilley vs. The State, 20 id., 231.) We must
113 therefore disregard the writ and dispose of the case on the exceptions.

The evidence on the part of the defendant was the same introduced on behalf of the railway company in opposition to the second application for an injunction in the case of the Attorney-General vs. The Chicago, Milwaukee and St. Paul Railway Company, 35 Wis., and its object and purpose was to show that the railway of that company, from Madison to Janesville, was constructed by a company organized under a charter granted by the legislature of the Territory of Wisconsin, to the rights of which company the Chicago, Milwaukee and St. Paul Railway Company had succeeded.

The exceptions before us are to the refusal of the court to give the jury certain proposed instructions to the effect that chap. 273, laws of 1874, so far as it related to such railway from Madison to Janesville, is unconstitutional and void. The opinion by the chief-justice on the second application for an injunction, above mentioned, disposes of these exceptions adversely to the defendant, and further discussion of the questions there considered and determined is unnecessary.

114 The exceptions must be overruled and the case remanded, with directions to the circuit court to proceed therein to judgment.

STATE OF WISCONSIN,
Supreme Court:

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original opinion of the court on file in my office in the above-entitled cause, and that it is a correct transcript therefrom.

In testimony whereof I have hereunto set my hand and affixed the eal of said court, at Madison, the 12th day of June, A. D. 1875.

[SUP. CT. SEAL.] LA FAYETTE KELLOGG,
Clerk of Supreme Court of Wisconsin.

115 (Indorsed as follows, to wit:) State of Wisconsin, supreme court. State of Wisconsin against L. D. Stone. Certified copy of opinion by Lyon, J. Filed June 17, 1875. B. C. Slaughter, d'p'ty. clerk. Fee for this copy, $1.75.

116 STATE OF WISCONSIN,
Circuit Court for Dane County, Dane County, ss:

I, B. Esser, clerk of the circuit court in and for the county of Dane and State aforesaid, do hereby certify that I have compared the foregoing and annexed copy of files and records with the original now of file and of record in my office, wherein the State of Wisconsin is plaintiff and L. D. Stone is defendant, and that the same is a true and correct transcript of said originals, and the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 17th day of August, A. D. one thousand eight hundred and seventy-five.

[SEAL.] B. ESSER, *Clerk.*

117 *Judge's certificate.*

STATE OF WISCONSIN,
Circuit Court for Dane County, ss:

I, Alva Stewart, judge of the ninth judicial circuit of the State of

Wisconsin, and presiding judge of said court, do hereby certify that the within attestation to the foregoing exemplification of the judgment-roll, wherein the State of Wisconsin is plaintiff and L. D. Stone is defendant, is in due form of law; that B. Esser is the clerk of said court; that I am well acquainted with his handwriting, and that his signature to said attestation is genuine.

Witness my hand, at Madison, this 17 day of August, A. D. 1875.

ALVA STEWART, *Judge.*

118 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judge of the circuit court for Dane County, in the State of Wisconsin, greeting:

Because in the record & proceedings, as also in the rendition of judgment in a plea which is in the said circuit court for Dane County, in the State of Wisconsin, before you, being the highest court of law or equity of said State in which a decision could be had in said suit between the State of Wisconsin, plaintiff, and L. D. Stone, defendant, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said L. D. Stone, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October
119 next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

EDWARD KURTZ,
Clerk U. S. Circuit Court for East'n Dist. of Wisconsin.

(Indorsed:) Allowed July 14, 1875. Alva Stewart, judge. Filed July 14, 1875. B. C. Slaughter, dep'ty clerk.

120 The United States of America to the State of Wisconsin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the circuit court for Dane County, State of Wisconsin, wherein L. D. Stone is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned,

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Alva Stewart, judge of the circuit court for Dane County, State of Wisconsin, this thirteenth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

ALVA STEWART, *Judge.*

(Indorsed:) Supreme Court United States of America. L. D. Stone, plaintiff in error, vs. The State of Wisconsin, defendant in error. Citation.

Due service of the within citation admitted, July 14th, 1875.

A. SCOTT SLOAN,
Atty. Gen'l.

Filed July 14, 1875. B. C. Slaughter, deputy clerk.

121 Know all men by these presents, that we, Sherham S. Merrill and John W. Cary, both of the city of Milwaukee, State of Wisconsin, are held and firmly bound unto the State of Wisconsin in the full and just sum of five hundred dollars, to be paid to the said State of Wisconsin, its certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, by these presents, sealed with our seals and dated this 14th day of July, A. D. 1875.

Whereas lately, at a circuit court held in & for Dane County, in a suit depending in said court between the State of Wisconsin, plaintiff, and L. D. Stone, defendant, judgment was rendered against the said L. D. Stone, and the said L. D. Stone having obtained a writ of error
122 issuing out of the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said court of Dane County, to reverse the said judgment in the aforesaid suit, and a citation directed to the said State of Wisconsin, citing and admonishing to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said L. D. Stone shall prosecute said writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

S. S. MERRILL. [SEAL.]
JOHN W. CARY. [SEAL.]

In presence of—
MELBERT B. CARY.

(Indorsed:) Supreme Court United States of America. L. D. Stone, plaintiff in error, vs. The State of Wisconsin, defendant in error. Bond. Approved July 14th, 1875. Alva Stewart, judge. Filed July 14, 1875. B. C. Slaughter, dep'ty clerk.

123 *Return to Supreme Court.*

STATE OF WISCONSIN,
Circuit Court for Dane County, Dane County, ss:

I, B. Esser, clerk of said court, do hereby certify that the foregoing and annexed paper writings are the original writ of error, citation, and bond on appeal, and exemplified transcript of all the files, records, and

proceedings which have been filed in my office in the action wherein the State of Wisconsin is plaintiff and L. D. Stone is defendant, and that the same are hereby transmitted to the judges of the Supreme Court of the United States of America in pursuance of said notice of appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Madison, this 17th day of August, A. D. 1875.

[SEAL.] B. ESSER, *Clerk.*

(Indorsement on cover:) No. 589. L. D. Stone, plaintiff in error, vs. The State of Wisconsin. Wisconsin, Dane county cir. ct. Filed 14th September, 1875.

Supreme Court of the United States.

L. D. STONE,
Plaintiff in Error,

v.

THE STATE OF WISCONSIN,
Defendant in Error.

No. 589.
October Term, 1875.

This is a writ of error to Dane county Circuit Court of Wisconsin, to bring up the record in a criminal action prosecuted by the State of Wisconsin against the plaintiff in error for a violation of the provisions of section six, of chapter 273, of the laws of 1874, of the State of Wisconsin, which said section reads as follows:

"SEC. VI. In no instance shall any such individual, company, or corporation, lessee, or other person, charge or receive any greater rate or compensation for carrying freight or passengers than hereinbefore provided; and any individual, company, or corporation, violating or in any way evading the provisions of this act, shall forfeit all right to recover or receive any compensation whatever for the services rendered, wherein such violation is attempted; and every agent of any such corporation, lessee, or other individual operating any railroad within this State, who shall refuse to receive for transportation over the road for which he is agent, in the usual way, any of the articles hereinbefore mentioned, on account of the compensation hereinbefore prescribed being too low, or, receiving any such articles of freight, shall charge or attempt to charge for the transportation of the same any greater sum than herein fixed, or shall in any manner violate or attempt to violate or evade the provisions of this act, shall be deemed guilty a misdemeanor, and on conviction thereof shall pay a fine not exceeding two hundred dollars for each and every offense, and the injured party shall have a right of action against

said agent, or against the railroad company or other person operating the railroad, or both, in which he shall be entitled to recover three times the amount taken or received from him in excess of the rates prescribed by this act.

The plaintiff in error was the ticket agent of the Chicago, Milwaukee and St. Paul Railway Company at the city of Madison, Winconsin, and was charged with a violation of said section, viz: on the complaint of one William Welch, for that said Stone, the plaintiff in error, on the 12th day of May, 1874, as said agent, wrongfully, unlawfully, and willfully charged one Richard F. Hayes for the transportation of said Hayes, with ordinary baggage, not exceeding one hundred pounds in weight, over said railway from Madison, in Dane county, Wisconsin, to the city of Janesville, in said State, a distance of forty miles, a higher rate of compensation than three cents per mile, to wit: one dollar and sixty cents, contrary to the form of the statute in such case made and provided. That said Stone was arrested and tried before the municipal court of the city of Madison, convicted and fined. An appeal was taken to the circuit, where a trial was had, and the defendant, plaintiff in error, was found guilty.

On the trial exceptions were alleged, and after verdict proceedings were stayed, and the exceptions certified to the Supreme Court of the State, (Record, pp. 8 and 9,) where the exceptions were overruled and the cause remitted to the circuit with directions to proceed to judgment. (Record, pp. 10 to 37.) And at a subsequent term of said Circuit Court, to wit: on the 14th day of July, 1875, the court sentenced said plaintiff in error to pay a fine of fifty dollars and costs of suit, to reverse which this writ of error was prosecuted out of this court.

From the bill of exceptions it appears that Stone was the ticket agent of the said Chicago, Milwaukee and St. Paul Railway Company, and that he sold a ticket to Hayes for $1 60 from Madison to Janesville, a distance of forty miles. The defendant introduced the charter of the Milwaukee & Waukesha Railroad Company, passed by the

Territorial Legislature of the State of Wisconsin, and approved March 11th, 1847. (Record, pp. 10–15.)

The 15th section of said charter is as follows: "On the completion of said railroad or any portion of the track, not less than two miles, it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property as they shall from time to time think reasonable."

Defendant also introduced an act to amend said charter, passed by said Territorial Legislature, and approved in 1848, authorizing said company to extend its road to the Mississippi river. (Record, p. 16.)

Also an act passed by the State of Wisconsin, and approved in 1850, changing the name of said company to the Milwaukee and Mississippi Railroad Company. (Record, pp. 16, 17.)

Also proof showing the organization of said company under said charter, by which it appeared that the commissioners named in said charter met November 13, 1847, and organized by electing a president and secretary, and fixed a time for opening the books for subscription to the capital stock of said company, and that, in pursuance thereof, books were opened on the first Monday of February, 1848, and remained open until the 5th day of April, 1849, when said commissioners, having ascertained that $100,000, the amount required by the charter, had been subscribed, said books were closed, and a meeting of the stockholders called to elect directors on the 10th day of May, on which day the first board of directors were elected by the stockholders; and it further appears that the amendment of said charter procured in 1848 was procured by said commissioners named in said charter. (Record, pp. 17–20.)

It was further proved that the road from Milwaukee through Madison to Prairie du Chien, on the Mississippi river, and to Janesville, was constructed by said company under said charter; that the construction was commenced in 1849; completed to Janesville in 1853; to Madison in 1854; to Prairie du Chien in 1857; that during its con-

struction several deeds of trust or mortgages were executed upon said road to secure bonds issued by the company covering the whole line of road; that default was made in the payment of interest on said bonds in 1859; that the mortgage deeds of trusts were foreclosed in chancery in the United States court for the district of Wisconsin in 1860, and that the whole road and its appurtenances were sold in January, 1861, by the United States marshal on said foreclosure, and purchased by L. H. Myer, John Catlin, Allan Campbell, W. Schall, and Louis A. Van Hoffmann. (Record, p. 20.)

Defendant then gave in evidence chapter 121 of the General Laws of Wisconsin, approved October 10, 1856, entitled "An act concurring railroads." (Record, pp. 21, 22.)

Defendant also gave in evidence chapter 308 of the laws of 1860, entitled "An act to facilitate and authenticate the formation of a corporation by the purchase of the Milwaukee and Mississippi Railroad Company." (Record, pp. 23 and 24.)

The defendant also gave in evidence the articles of association made by the purchasers of said railroad forming the Milwaukee and Prairie du Chien Railway Company. (Record, pp. 24–29.)

The deed of the Milwaukee and Prairie du Chien Railway Company to the Milwaukee and St. Paul Railway was introduced in evidence. (Record, 29–30.)

Proof of change of name of Milwaukee and St. Paul Railway Company to Chicago, Milwaukee, and St. Paul Railway Company. (Record, pp. 30 and 31.)

It was further proved that the fare established by the company for transportation of passengers from Madison to Janesville was $1.60, and at the rate of four cents per mile, and that that had been the price for more than six years prior to May 13, 1874, and that the rate charged was no more than a reasonable rate and compensation.

It further appeared that the Chicago, Milwaukee, and St. Paul Railway Company was organized under the laws of Wisconsin; that it was formed under the provisions of

chapter 121 of the laws of 1856, which chapter was incorporated into the revised statutes of Wisconsin of 1858 as a part of chapter 79; that said corporation was organized and formed on the 5th day of May, 1863, by the purchasers of a portion of the La Crosse and Milwaukee Railroad, at a sale of said road by the marshal of the district of Wisconsin on the foreclosure of a mortgage trust deed given by the last-named company to Green C. Bronson, James T. Soutter, and Shepherd Knapp as trustees; that articles of association were made, signed, and filed by said purchasers in the office of Secretary of State of Wisconsin, under the statute above-named, on the said 5th day of May, 1863.

The State also introduced and read in evidence an act entitled "An act to incorporate the Madison and Prairie du Chien Railroad Company, approved March 24, 1852," being chapter 149 of the laws of 1852.

Also an act entitled "An act to consolidate the capital stock of the Madison and Prairie du Chien Railroad Company with the capital stock of the Milwaukee and Mississippi Railroad Company," approved June 25, 1853, being chapter 320 of P. and L. laws of 1853. (Record, 31.)

It further appears from the record, on pages 33 and 34, as follows:

And the said defendant's counsel then and there asked said circuit judge to charge and instruct said jury as follows, to wit:

1st. The railroad from Madison to Janesville having been chartered by the Territorial Legislature prior to the adoption of the State constitution, and the charter having conferred upon the company the right to fix its own charges for the transportation of passengers, it was not competent for the Legislature of 1874 to pass a law fixing the charges of the company for the transportation of passengers on this road, for the reason that it is in conflict with the Constitution of the United States, as impairing the obligation of contract.

2d. The Territorial Legislature having granted a charter for the construction of this railroad, and the same having been accepted by the company and the road constructed

under it, said charter, on its acceptance by the company, became a valid and binding contract between the company and the territory, as of the day on which it was passed, and said charter, by its terms, having granted to the company the right to fix its own charges for the transportation of passengers over said road, the act of the Legislature of 1874, known as chapter 273, entitled "An act relating to railroads, express, and telegraph companies in the State of Wisconsin," is, so far as it attempts to fix the charges for the transportation of passengers over said road without the consent of said company, unconstitutional and void, as being in contravention of the Constitution of the United States.

3d. The charter of the company having expressly granted to the company the right to fix its charges for the carriage of passengers over its road, and the road having been constructed under this grant and upon the solemn faith of the Government thus pledged to the company, the right so to fix said charges became fixed and vested in the company, and it was not competent for the Legislature of Wisconsin for the year 1874 to pass an act taking from the company this right without the consent thereto of the company, and the chapter 273 of the laws of 1874, entitled "An act relating to railroad, express, and telegraph companies in the State of Wisconsin," in so far as it attempts to fix the rates of this company for the carriage of passengers on this road, and to take that right from said company is unconstitutional and void, as being in contravention of the Constitution of the United States.

But the said circuit judge did then and there refuse to instruct said jury as requested, and did refuse to give each of said instructions separately, as requested by said defendant's counsel. And thereupon the said defendant's counsel did then and there except to each one of said refusals, separately, as made by said circuit judge.

Error Assigned.

The refusal of said circuit judge to charge as requested in the foregoing propositions is the error assigned in this cause by the plaintiff in error, and for which he asks that said judgment be reversed.

I.

The charter in this case was granted by the Territorial Legislature and the road constructed under it. By its express terms the company was authorized to fix its own rates for the transportation of freight and passengers. The charter is a contract, and cannot be impaired by subsequent legislation.

The reserved power of the Constitution has no effect upon this charter. The road built under it is not affected by section 1 of Article XI of the Constitution of Wisconsin, but is protected under the rule established by this court in the Dartmouth College case.

It makes no difference that this road has passed from the original company and is now owned by a corporation which was formed under or subject to the reserved power. This road retains all the rights and immunities given by the charter under which it was built.

Commonwealth *v.* Canal Co., 66 Pa., 41.
Atkinson *v.* Marietta R. R., 15 Ohio St., 36.
Johnson *v.* Hamilton, 23 Ohio St., 187.

~~Chapter~~ of the statutes of Wisconsin was repealed by chapter 5 of the Revised Statutes of 1849, without any saving clause. And section 1 of Article II of the Constitution is prospective in its operation, and only affects charters or general laws enacted under its provisions. Hence there is no reserved power affecting this charter, and chapter 273 is in violation of the Constitution, so far as this charter is concerned.

II.

The judgment should be reversed for the reason that said chapter 273 is in violation of the Constitution of the United States, for the reasons stated in the brief filed by appellant in the case of Piek and others *v.* George H. Paul and others, being No. 214 of this term, to which the court is referred.

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III.

a- Chapter 273 is in violation of the provisions of Article II of the ordinance of 1787 for the government of the territory northwest of the Ohio river, which is in the words following:

"ARTICLE II. . . . *No man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land;* and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. *And in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide and without fraud previously formed.*"

Hogg *v.* Zanesville, &c., Co., 5 Ohio, 410.
Spooner *v.* McConnell, 1 McLean, 337.
Cooley on Const. Limitations, 26, and note.

JOHN W. CARY,
Of Counsel for Plaintiff in Error.

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